Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

APPENDIX

IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-5414

ILYA WOLSTON,

Petitioner,

—*v.*—

THE READER'S DIGEST ASSOCIATION, INC., d/b/a READER'S DIGEST PRESS; BANTAM BOOKS, INC.; BOOK-OF-THE-MONTH CLUB, INC.; MACMILLAN BOOK CLUBS, INC.; JOHN BARRON,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

PETITION FOR CERTIORARI FILED SEPTEMBER 18, 1978
CERTIORARI GRANTED JANUARY 8, 1979

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TABLE OF CONTENTS

	Page
Docket Entries In Civil No. 75-0459	1
Complaint	3
Extracts from Deposition of John Barron	7
Plaintiff's Exhibits:	
No. 1 (*KGB*—extracts)	27
No. 2 (*My Ten Years As A Counterspy*—extracts)	30
Extracts from Deposition of Ilya Wolston	35
Defendants' Exhibits:	
Nos. 2-16 (Wolston Newspaper Articles)	41
Affidavit of John Barron	53
Attachment (Expose of Soviet Espionage: May 1960—extracts)	55
Affidavit of Herbert C. Kantor filed by defendants in support of Motion for Summary Judgment	85

TABLE OF CONTENTS

	Page
Affidavit of Ilya Wolston	91
District Court Memorandum Opinion and Order	93
Opinion of United States Court of Appeals for the District of Columbia Circuit	117
Order of the Supreme Court of the United States Granting Motion for Leave to Proceed in Forma Pauperis and Granting Petition for Writ of Certiorari	131

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil No. 75-0459

ILYA WOLSTON

v.

READER'S DIGEST ASSOCIATION, INC., ET AL.

DOCKET ENTRIES

Dates	Proceedings
3-31-75	Complaint, appearance, jury demand
3-31-75	Summons issued
4-4-75	Summons issued
4-18-75	Notice by plaintiff to take deposition of John Barron
5-5-75	ORDER extending time to May 5 for defendants to answer Complaint
5-12-75	Answer of defendants to complaint. Appearance of Peter B. Hamilton
5-12-75	CALENDARED CD/N
5-15-75	Stipulation extending time to May 19 for defendants to answer complaint
6-5-75	Deposition of John Barron
7-21-75	Status Call
8-8-75	Notice by defendants to take deposition of plaintiff
3-19-76	Deposition of Ilya Wolston
4-7-76	Motion of defendants for summary judgment; affidavits of John Barron, Marcus H. Jaffe, Al Silverman, William Houghton, Stephen Bair and Morton L. Levin
4-8-76	Request of defendant to file book as an Exhibit to John Barron's deposition

Dates	Proceedings
4-26-76	Stipulation extending time to May 10 for plaintiffs to respond to motion for summary judgment
5-12-76	Stipulation extending time to June 14 for plaintiffs to respond to motion for summary judgment
6-15-76	Motion by plaintiff for leave to file points and authorities in excess of 35 pages
6-18-76	Motion of plaintiff for leave to file points and authorities in excess of 35 pages; granted
9-13-76	Reply memorandum by defendants in support of motion for summary judgment
10-26-76	Motion of defendants for summary judgment argued and taken under advisement
1-31-77	Judgment for defendants against plaintiff
2-3-77	Memorandum Opinion and Order filed 1/31/77 granting motion of defendant for summary judgment
2-23-77	Notice of Appeal by plaintiff from Order of 1/31/77

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

Civil No. 75-0459

ILYA WOLSTON,
3750 39th Street, N.W.
Washington, D.C.
(202) 363-4049, PLAINTIFF

—against—

THE READER'S DIGEST ASSOCIATION, INC.,
doing business as READER'S DIGEST PRESS
200 Park Avenue
New York, New York

BANTAM BOOKS, INC.
666 Fifth Avenue
New York, New York

BOOK-of-the-MONTH CLUB, INC.
1225 South Market
Camp Hill, Pennsylvania

MACMILLAN BOOK CLUBS, INC.
886 Third Avenue
New York, New York

JOHN BARRON
Falls Church, Virginia, DEFENDANTS

COMPLAINT—Filed March 31, 1975

1. Plaintiff Ilya Wolston is a citizen of the District of Columbia. On information and belief, defendant John Barron is a citizen of the State of Virginia; defendant The Reader's Digest Association, Inc., doing business as Reader's Digest Press, (hereinafter "Reader's Digest") is a corporation incorporated in the State of Delaware with its principal place of business in the State of New

York; defendant Bantam Books, Inc. (hereinafter "Bantam") is a corporation incorporated in the State of Delaware with its principal place of business in the State of New York; defendant Book-of-the-Month Club, Inc. is a corporation incorporated in the State of New York with its principal place of business in the State of Pennsylvania; and defendant Macmillan Book Clubs, Inc., is a corporation incorporated in the State of Delaware with its principal place of business in the State of New York. The matter in controversy exceeds, exclusive of interest and costs, the sum of Ten Thousand ($10,000) Dollars. The Court has jurisdiction over the subject matter of this action by reason of and pursuant to the provisions of 18 U.S.C. § 1332.

2. Plaintiff has for many years enjoyed an excellent reputation as a private citizen. In the 1950's he failed to comply with a subpoena requiring his appearance before a grand jury which was investigating alleged acts of espionage by certain persons, including one person who was related to plaintiff. Such subpoena was issued after a number of prior subpoenas had been issued and plaintiff had responded thereto and given testimony in connection therewith. As a consequence of plaintiff's failure to appear in response to the aforesaid subpoena, plaintiff was charged with violation of 18 U.S.C. § 401. Motivated by concern for his wife, his state of health, and a recognition that the temper of the times would have made a defense difficult if not impossible, plaintiff pleaded guilty to the aforesaid charge and received a suspended sentence thereon. Except for the aforesaid charge and plea made under the circumstances as aforesaid, plaintiff has led an unblemished and exemplary life.

3. In or about 1973, defendant Barron wrote a book entitled *KGB—The Secret Work of Soviet Secret Agents* in which plaintiffs' name appears in the index with the following language:

"Wolston, Ilya, Soviet agent in the U.S."

In said book appears the following test:

"Among Soviet agents identified in the United States were Elizabeth T. Bentley, Edward Joseph Fitzgerald, William Ludwig Ullmann, William Walter Remington, Franklin Victor Reno, Judith Coplon, Harry Gold, David Greenglass, Julius and Ethel Rosenberg, Morton Sobell, William Perl, Alfred Dean Slack, Jack Soble, *Ilya Wolston*, Alfred and Martha Stern.* (Emphasis supplied)

* No claim is made that this list is complete. It consists of Soviet agents who were convicted of espionage or falsifying information or perjury and/or contempt charges following espionage indictments or who fled to the Soviet bloc to avoid prosecution."

4. In or about January, 1974 and again in April, 1974 editions of the aforesaid book containing the aforesaid statements were published, distributed, and circulated in the District of Columbia and elsewhere throughout the United States by defendants Barron and Reader's Digest.

5. In or about July, 1974 an edition of the aforesaid book containing the aforesaid statements was published, distributed and circulated in the District of Columbia and elsewhere throughout the United States by defendants Barron, Reader's Digest and/or the Book-of-the-Month Club, Inc.

6. In or about July, 1974, an edition of the aforesaid book containing the aforesaid statements was published, distributed and circulated in the District of Columbia and elsewhere throughout the United States by defendants Barron, Reader's Digest and/or Macmillan Book Clubs, Inc.

7. In or about December 1974, another edition of the aforesaid book containing the aforesaid statements was published, distributed and circulated in the District of Columbia and elsewhere throughout the United States by defendants Barron and Bantam.

8. The aforesaid statements with respect to plaintiff were malicious, false, scandalous and defamatory libel.

9. The aforesaid statements with respect to plaintiff were published by defendants carelessly, recklessly and with wanton disregard of plaintiff's rights.

10. By reason of the aforesaid publications of said statements with respect to plaintiff, he has been deprived

of his good name, reputation, and the esteem of others; he has been held up to public scorn, contempt and disgrace; he has been greatly injured in his good name, reputation and the esteem of others; he has been held in contempt, calumny, distrust and ridicule; and he has suffered embarrasment, humilation and mental agony.

Wherefore plaintiff prays for a judgment against the defendants, and each of them, for the sum of Two Hundred Thousand ($200,000) Dollars in compensatory damages and for the sum of One Million ($1,000,000) Dollars in punitive damages.

DATED: March 31, 1975

DICKSTEIN, SHAPIRO & MORIN

By: /s/ Sidney Dickstein
A Member of the Firm
1735 New York Avenue, N.W.
Washington, D.C. 20006
(202) 785-9700

PLAINTIFF DEMANDS A TRIAL BY JURY

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

C.A. No. 75-0459

ILYA WOLSTON, PLAINTIFF

vs.

READER'S DIGEST ASSOCIATION, INC.,
d/b/a Reader's Digest Press, ET AL., DEFENDANTS

Washington, D.C.
Thursday, May 15, 1975

Deposition of

JOHN BARRON,

* * * *

[3] Q Where are you employed, Mr. Barron?
A By the Reader's Digest in Washington.
Q In what capacity?
A As a senior editor.
Q How long have you been so employed?
A I have been with the Digest since March 1965.
Q What was your initial employment, that is, the capacity of your initial employment?
A Staff Writer.
Q Would you tell us what your successive titles were during that period of time while you remained in the employ of the Reader's Digest, to date, and also indicate the date or [4] approximate dates on which these titles were changed.
A In 1966 I became an associate editor of the magazine, and in 1971 a senior editor.
Q Which position do you hold now?
A Senior editor.
Q What are the duties of a senior editor?
A They are very varied. They can range from editing copy to conceiving stories, to writing stories, to running a copy desk, being a manager.

* * * *

[23] Q Was it your idea in determining whether the book could be written, and in writing the book, to utilize original sources, as you have defined it and as I have just referred to it, wherever possible?

A Not wherever possible. We wanted to be able to cite as frequently as possible our sources, so as to enable the reader to make his or her own judgment as to the credibility of what we were saying; but at the same time, we wanted to gather from sources that were heretofore inaccessible or confidential, information too.

Q You also spoke of verification as being one of the aspects that you were considering.

A Yes.

Q Or you would consider in determining whether the book [24] could be written. What did you have in mind by that?

A We, in general, set for ourselves as a criterion or a requirement, the corroboration by at least one additional source of any data provided by another source. In other words, if we were to talk to one former KGB officer, we felt that in general we could not rely on whatever he might say, unless we could, to some considerable extent, obtain corroboration of that from another reputable source. Similarly, we could not—well—

Q What did you consider as among the reputable sources from which you would obtain corroboration?

A A government agency or an agency of any government that might have independently investigated the matters the former officer was testifying about. Another Soviet citizen who had knowledge of these matters.

Q Did you, in making the study, employ as a precept that information which derived, or which came solely from, a former KGB agent, was insufficiently reliable to incorporate in your book?

A Not always. We eventually decided that if a source had provided information, a volume of information, that we had been able to verify, that in some instances we would include [25] information that we couldn't verify from any independent source, because in our judgment he had established a credibility; but that we would so advise the reader, that that is the only source.

* * * *

[28] Q Did you and he work independently in conducting this feasibility study, or was his role in the study stage, at least, essentially one of consultation with you?

A It was more the latter. He may have done some things on his own, but he was more of a consulter and cooperater, really.

Q How did you go about making this study?

A We approached a number of foreign security and intelligence services with requests that they assist us. We at the same time began to compile a list of former Soviet nationals [29] in the West who had served in the KGB, or who had some special knowledge of it.

Q Using what sources?

A Every source we could. Open sources. Anybody we could find who could tell us about this.

Q Open sources meaning newspapers, magazines and alike?

A Yes. Correct.

Q And books published by others?

A Correct.

Q And non-open or covert sources being what?

A Sources I am really not at liberty to reveal.

Q I believe you testified you consulted with foreign security services?

A Yes.

Q Did you also consult with domestic security services?

A Yes.

Q Would that include the F.B.I and the C.I.A.?

A Yes.

Q And any other U.S. agencies?

A Yes.

Q The Department of State?

A Yes.

[30] Q Military intelligence groups?

A Yes.

Q Navy?

A I don't believe we had any dealings with the Navy.

Q Army?

A No.

Q Any organs of Congress?
A No. We obtained from various committees all their publications, but that was the extent of it, as I recall it.
Q And this was during the feasibility stage?
A We obtained some during the feasibility stage. Yes.
Q Did this feasibility study result in a written report?
A Yes.
Q That was made to Mr. Lewis?
A Yes.

* * * *

[31] Q The list that you compiled from both open and covert sources of Soviet agents, did that include the name of Ilya Wolston?
[32] A No. Let me stress, we were interested in Soviet, former Soviet, officers who had cooperated and who we thought could be useful sources.
Q And that was the makeup of the list?
A Yes.
Q Was the name Jack Soble on the list?
A No.
Q You were aware at that time that a Jack Soble had been prominently mentioned as a Soviet agent, were you not?
A Yes, but I think we are confused here by terminology. We were interested in staff officers of the KGB, or the GRU, or other bloc services; not so much spies that they had employed. The terms "agent" and "officer" I know are used interchangeably, but there is a technical difference.
Q Didn't you regard a spy that they had employed and who had thereafter started talking about his activities and the activities of others, as a source, or a potential source of the type of information you were trying to compile?
A Not necessarily; and also, you will recall I mentioned that we were interested in fresh data. The Soble case had been much in the press, and I don't think I ever paid much attention to it. Certainly, because it was so old, I was not all that [33] much interested.

Q Are you saying that it was not all that interesting during the feasibility study stage, or that it never was all that interesting?
A During the feasibility stage.
Q Was the name Boris Morros on your list of potential sources in the feasibility study?
A His book was.
Q Did you read his book during the period in which you were making this feasibility study?
A I was very familiar with his book before we began the study.
Q Was that by reason of having read it?
A Yes.

* * * *

[34] Q What judgment did you make and report to your supervisors?
A That we felt it could be done.
Q In making that decision, had you reached any conclusion as to whether you would have the cooperation of the F.B.I. in this project?
A Yes.
[35] Q What conclusion had you reached?
A That we would have some cooperation.
Q In making this decision, had you reached any conclusion as to whether you would have the cooperation of the C.I.A. in this project?
A That we would have some cooperation; yes.
Q In reaching this decision, did you reach any conclusion as to whether you would have the cooperation of the United States Defense Intelligence Agency?
A I don't think that we had consulted the D.I.A. or reached a conclusion about what might be forthcoming from them at the time of this study.
Q And what about the Intelligence Services of the Department of State? Had you consulted with them, and reached any conclusion as to whether they would cooperate?
A I think at the time we felt we might receive some minimal cooperation from the Department of State.
Q What was the basis of that belief?
A Oh, probably informal surveys as to what unclassified information might be available to anybody that asked for it.

Q What was the basis of your belief that the F.B.I. would be cooperative?

[36] A Discussions with the F.B.I.

Q Who in the F.B.I.?

A Carter DeLoach.

Q Who was then who?

A I'm always a little confused about the titles they use over there. I think his title was Assistant to the Director.

* * * *

[37] Q The subject matter that we presently focus on, Mr. Barron, was the basis upon which you concluded during the period of time in which you were conducting the feasibility study that the F.B.I. would be cooperative. You have indicated that you spoke to Carter DeLoach, and I asked you, and I repeat the [38] question, to whom else did you speak in the F.B.I. which gave you reason to believe they would be cooperative if you undertook to write this book?

A And I repeat, I had confidential conversations with a number of people with the understanding that I would not divulge their names, and I don't feel at liberty to do so now.

Q Whether I accept that, of course, is one thing. I will just let it rest at that until it is decided in a different forum. But can you confirm at least that you did speak to other people in the F.B.I. besides Carter DeLoach?

A Yes, sir.

Q Which gave you reason to believe the F.B.I. would be cooperative?

A Yes.

Q Were these people who were superior to Carter DeLoach, or below him in the F.B.I. hierarchy, or both?

A No, they were below him.

Q Without specifically identifying these people, were these agents?

A Yes.

Q What was the basis for your belief that the C.I.A. would be cooperative in this endeavor?

[39] A We had asked if we could obtain through the C.I.A. the addresses or the means to communicate with

former KGB personnel that we were interested in contacting; and eventually we were told that each request would be considered and possibly complied with.

Q Did you attempt to elicit from the C.I.A. information whether they would be cooperative in any other respect if you undertook to write the book, or were you working at the time only to supply the present addresses of KGB personnel?

A No, we wanted to make sure that the C.I.A. would not interpose any problems for us, which it easily could have done; and with no commitments from the C.I.A. on that score, we had the impression that it would not.

Q Did you have any impression as to whether the C.I.A. or C.I.A. personnel then employed, or previously employed, would be available to you in the verification process which you spoke of?

A Yes. With regard to retired C.I.A. personnel, I did know of some who agreed to take or look at certain portions of our work if it ever materialized.

Q Did you have any reason to believe you would have any access to the files of the C.I.A. for such verification [40] effort?

A No.

Q Did you have any reason to believe you would have access to the files of the C.I.A. for the collection effort?

A No.

Q I take it that the conclusion you reached after conducting this feasibility study was that there was original data in sufficient quantity and opportunity to verify that data to warrant going forward with this book. Is that accurate?

A We thought the chances of doing so were such. We were not sure.

* * * *

[43] Q In your author's preface to this book, which you have testified was accurate, you stated that Hobart Lewis authorized you to travel anywhere, to invest as much time and research as you judged necessary, and to take maximum advantage of the worldwide research resources of the Digest. When did Hobart Lewis so advise [44] you?

A In the period following my return from Mexico,

that was communicated to me and it was suggested in the cable to us.

Q The cable you received from Mr. Gilmora?

A Yes.

* * * *

Q Did you have any understanding with Mr. Lewis or the Reader's Digest generally as to who was going to pay for the travel which you would take in connection with the writing of the book?

A There was no understanding. It was just an informal understanding. It was assumed by one and all that the Digest would.

Q The advice that you could invest as much time and research as you judged necessary—was that fleshed out in any [45] way? Did you have any discussion as to approximately how much time you anticipated you would have to spend in research?

A We originally estimated that the entire process, that is, the collection of data and the writing of the book, and so on, would require about three years.

Q Did that estimate prove to be a correct one?

A No, it took longer.

Q How much longer?

A Well, more than a year longer.

Q Four-plus years?

A Yes.

Q Of those four-plus years, could you approximate what percentage of that amount was spent on research, as distinguished from writing material that you had compiled through such research?

A Bearing in mind it is only an estimate, I would say approximately 50 to 55 percent in research and the remainder in writing. You see, we were writing portions of it as we went along, so there was no clear demarcation.

Q What were the world-wide research sources of the Reader's Digest as they existed during the period of time in which you were conducting your research on this program?

A We have—as we publish in thirteen languages and [46] have offices in a number of countries, these offices

provided research resources. We have additionally in Paris a magnificent research office. We have in New York an equally magnificent one.

Q When you say "magnificent," would you describe what that encompasses?

A Well, with regard to Paris and New York, the staffs consist of professional researchers. In Paris, linguists who have a capability of collecting and translating and evaluating all sorts of data. And you also have access to the normal sources that journalists tend to have.

Q What was the size of the research staff in New York?

A Where?

Q In New York City. You said New York. I assume you meant New York City. Is it New York City you are referring to?

A Yes. Yes. I really don't know. We probably have as many as twenty people, but that is just an estimate.

Q Did you consider that all of those twenty people were available to you in accordance with Mr. Lewis's instructions and advice?

A Oh, no. I wouldn't need all twenty of them, but I [47] did consider that they had the capacity to retrieve data from the press, from the library resources of the city, and from other reference work, and to conduct interviews, if necessary.

Q Did Mr. Lewis impose any limitation on the number of researchers you could employ, or the amount of hours of their time you could utilize in connection with this project?

A No.

Q What was the size of the research staff in Paris?

A Oh, I think our staff over there, again, would number maybe fifteen to eighteen people, including the editors.

Q Did Mr. Lewis impose any limitations either with respect to the number of people or the amount of time that you could utilize in connection with this project?

A No.

Q You had carte blanche as far as New York and Paris were concerned?

A Yes, I did, within reason, or practical reason.

Q What were the other research facilities, or research resources, available to the Reader's Digest, and hence available to you, in connection with this book?

A As I have stated, the offices of our various foreign editions were all available.

[48] Q Do you have a Berlin office?

A No.

Q Do you have any office in Germany?

A Yes.

Q Where is that?

A Stuttgart.

Q Are there researchers in that office?

A Yes.

Q Approximately how many during this period of time?

A I really don't know. These are foreign companies and I'm not all that familiar with the composition of the staff.

Q Did you ever have occasion to use your Stuttgart office for research or verification in connection with the preparation of this book?

A I think we did consult with them on several occasions.

Q Do you recall any consultation with them with regard to the subject matter of Ilya Wolston?

A No, there was none.

Q Do you recall any consultation with your Paris office with regard to the subject matter of Ilya Wolston?

A There was none.

[49] Q Do you recall any consultation with your New York researchers with respect to the subject matter of Ilya Wolston?

A The New York research office very well may have produced some of the newspaper clippings in our files pertaining to Mr. Wolston. We have some clippings, but material was flowing in from so many sources that I can't say that these particular clips came from New York. They might have been gathered here.

* * * *

Do you have any knowledge that there were newspaper [50] clippings in your research material pertaining to Iyla Wolston?

A We have some now. When we got them, I don't know. I may have misled the counsel in that he asked me what documents I relied upon, and that is the document that I relied upon solely.

Q You are pointing to Document 114, "Exposé of Soviet Espionage, May 1960"?

A That is correct. I had, in addition, as I said, read the Boris Morros book, and I may have read the newspaper clippings, but I don't know, because we didn't rely upon anything but the Senate Document.

* * * *

Q It is your best recollection, as you have just testified, that you relied exclusively on this Senate Document and, therefore, whether you had clippings before or after would not have any bearing upon the content of your book insofar as it refers to Ilya Wolston?

A That is correct, but I did not want to be misleading. [51] I read volumes of material and I very well may have read some of these references during the many nights that I read. I just don't know. But insofar as what we relied upon and what is stated in the book, it is the Senate Document before you.

Q On Page 188 of Plaintiff's Exhibit 1 and on Page 255 of Plaintiff's Exhibit 2 appears the name Ilya Wolston in conjunction with the names of Elizabeth T. Bentley, William Remington, Judith Coplon, Harry Gold, Julius and Ethel Rosenberg, Morton Sobell, and Jack Soble, and others, prefaced by the phrase, "Among Soviet agents identified in the United States."

Now, is it your testimony that the sole source of information upon which you based your identification of Ilya Wolston as being among the Soviet agents was this Senate Report?

A That is correct.

* * * *

THE WITNESS: Well, I say I had read the Boris Morros book, which identifies Mr. Wolston as a Soviet

agent in numerous pages. But for the purposes of documentation, it was the Senate Report on which we relied.
[52] MR. DICKSTEIN: When you say you read the Boris Morros book, you mean you read the entire book?
THE WITNESS: Yes.

* * * *

[59] Q Did you make any attempt whatever to verify any of the information which is set forth at Page 26 of Plaintiff's Exhibit 3 with regard to Ilya Wolston?
A No.
Q You were aware on a reading of Plaintiff's Exhibit 3, were you not, that the information with respect to Ilya Wolston that was reported here had come from Jack Soble?
A I was aware that some of it had.
Q Were you aware that there was any other source for any information concerning Ilya Wolston?
A Yes.
Q What other source?
A The F.B.I. The investigation of the F.B.I. which resulted in a report to the State Department in 1951 of black marketeering and probable espionage activities by Mr. Wolston that culminated in his dismissal from the State Department.
Q Did you make any effort to determine whether Mr. Wolston had been, in fact, dismissed from the State Department?
A We accepted the truth of the official F.B.I. and the Senate Document.
[60] Q The document to which you refer, and I am quoting in part, says:

"Information concerning the probable identification of Wolston as a Soviet agent was furnished to the Department of State in 1951, together with data developed concerning his black market activities in Germany. The Department of State, on the basis of these data, dismissed Wolston from his employment in Berlin."

Is that what you are referring to?
A Yes, sir.

* * * *

[61] A Do you want me to explain why we did not contact Mr. Wolston?
Q Yes.
A I guess there were several reasons. Mr. Wolston had refused to testify under command about the very matters we would be interested in questioning him about.
Q Excuse me, before you leave that. Where did you learn that?
[62] A From the statement. He refused to testify about espionage matters arising out of Grand Jury indictments.
Q The statement, I believe, said that Wolston was sentenced for contempt, for failure to appear before a Federal Grand Jury in July 1958. The sentence was suspended and he was placed on three years' probation, conditioned on his being available to process of the District Court within the three-year period.
A But that Grand Jury was investigating espionage matters.
Q Did you ascertain, or did you have any information as to whether Mr. Wolston had testified prior to the occasion of that Grand Jury subpoena?
A Subsequent. At the time of the writing, no. Subsequently, yes.
Q What did you do in your subsequent check?
A We found—I found, upon a rereading of the newspaper clipping, remarks to the effect that Mr. Wolston had testified prior to the time Jack Soble reversed his position and admitted his role in espionage. I found that subsequent to this reversal by Soviet Agent Soble, Mr. Wolston refused to testify.
[63] Q And you garnered this from newspaper clippings?
A Yes.

* * * *

A We additionally noted the statements imputed to people who knew Soble, I mean, knew Mr. Wolston, that he had a history of mental instability; and we were uncertain as to what reliability could be placed in such a witness.

Q When did you initially note this?

A In Boris Morros' book. There was subsequent confirmation of it in statements which were imputed to you, Mr. Dickstein.

Q The newspaper clippings that you obtained concerning Ilya Wolston, which you were uncertain as to whether or not you had them contemporaneous with your writing of the book—

A Yes.

Q —is there any reason why those clippings, if [64] obtained after you wrote the book, could not have been obtained prior to the time you wrote the book, or prior to the time the book was published?

A No, but there would be no reason to. They are certainly of a lesser source than the official Government document insofar as our research standards are concerned.

Q Again you are referring to Senate Document 114?

A That is correct.

Q When you decided to undertake to write this work, it was not your concept, was it, that you would simply take government documents and compile the information which existed in previously published sources?

A It was our desire, when we were talking about United States citizens, to rely upon sources that we could cite and defend. Yes. We certainly didn't intend to write the book solely from Government documents, as I had made clear.

Q As a matter of fact, you yourself, I believe, established that there were two criteria in determining whether or not this book would be feasible: The first was whether there would be original data which you defined as information which had not been previously published; and the second was whether data generally could be verified. Have I correctly paraphrased [65] your statement?

A Yes, but incompletely.

Q Would you complete it for us, please?

A Yes. We felt that, of course, you have to flesh out any work to make it believable. You have to refer people to matters that are a part of the public record. In this particular section we are using matters that are part

of the public record to illustrate a broader and, I think, more original theme.

Q Certainly you will agree, will you not, that this publication on which you rely, which on its face shows it was published in 1960, was information which was previously available to the public. Is that correct?

A Yes.

* * * *

Q Did you consider—and I am not asking a legal question now, but I am asking a literary question, if you would—did you consider that it was unnecessary to attempt verification of information concerning an individual which would have [66] appeared in some Government document?

A In this case I considered it unnecessary, yes.

Q Why was that?

A Because this was a considered formal statement by the F.B.I. bearing the imprimatur and passive endorsement of a constituted committee of the Senate, responsible for internal security matters; and our experience has been that statements of the F.B.I. issued under such circumstances are reliable and legally defensible.

Q Let us talk about their reliability and leave aside and leave to the lawyers the question of whether they are legally defensible. What was your experience which gave you reason to believe that statements published by the F.B.I. under such circumstances were reliable?

A My whole dealings as a journalist over the years with the F.B.I. have shown that the information they have imparted to me has been reliable.

Q What were those dealings, and what information did they impart to you which gave you this impression that the information they disseminated about individuals was reliable?

A You have asked two questions. My dealings as a newspaper reporter were very extensive over a number of years, [67] covering many subjects—civil rights, crimes, kidnapings—and the F.B.I. always told me the truth; and as far as the statement, what the F.B.I. said there was consistent with what was known from other sources.

Q You are talking about Boris Morros now?

A Yes. Well, I was speaking of the general F.B.I. report.

Q Was it your belief, then, in writing this book, that if the F.B.I. made a statement concerning someone, that you could accept it as gospel and not bother to verify, or attempt to verify, the truth or accuracy of that information?

A If the statement was made formally in writing and disseminated by a committee of the Senate, we considered it reliable. Yes.

* * * *

Q When you wrote this book and decided what would require or what would not require independent verification, were you concerned with trying to immunize the text from a lawsuit [68] such as this for libel, or were you concerned with an effort to be as reliable as it was possible to be?

A Well, both, but I think if you want really a responsive answer, I am afraid we are confusing two issues here. When we are speaking about original data, that is, emanating from one man in contradistinction to an institution, the requirements for verification there are much higher than a statement emanating from a duly constituted committee and from a respected agency of the Government.

Q The work, Document 114, Plaintiff's Exhibit 3, refers to information concerning the probable identification of Wolston as a Soviet agent being furnished by the Department of State. Did you attribute any significance to the word "probable" in this respect?

A I would have had the identification—if the identification of Wolston as a Soviet agent had not been made more categorically and specifically in later paragraphs and had not been made elsewhere.

Q What are the later paragraphs to which you refer?

A I was referring to a point in time. In other words, in one paragraph which appears after an earlier paragraph, we have a reference to a probable identification in 1951.

[69] Q Yes.

A But prior to that, in the second paragraph of the section under discussion, we have a statement that Jack Soble specifically identified Mr. Wolston as a Soviet agent.

Q Any other source? Does any other source appear in this document as the basis for so identifying Mr. Wolston?

A There are references elsewhere in the document to Wolston.

Q I realize there is another reference on Page 24, the prefatory statement that begins to describe the so-called Jack Soble case. Is that what you are referring to?

A Yes. I think there is also in the table of contents another reference to Mr. Wolston.

Q In the totality of this work, aside from the statement as to the probable identification of Wolston as a Soviet agent, which was furnished to the Department of State in 1951, according to this, is there any other information pertaining to Wolston which describes or suggests a source other than Jack Soble?

A I don't know what the source of this statement is, Mr. Dickstein.

Q What statement?

[70] A "In addition, the FBI investigation resulted in identifying as Soviet intelligence agents, Jane and George Zlatovski, who were indicted on July 8, 1957, charged with espionage conspiracy; Alfred and Martha Stern, who were indicted on September 9, 1957, on two counts charging espionage conspiracy; Ilya Wolston, who was charged with contempt for failing to appear before a grand jury and on August 7, 1958, pleaded guilty in the Southern District of New York."

I don't know what the basis of the F.B.I. statement there is.

Q Isn't that expanded upon on Page 26, the information given?

A I don't know whether we can call that an expansion at all. It is entirely possible they had still other information. I have to rely upon what they categorically say, though.

Q When you read this information about Ilya Wolston, you read it in its totality, didn't you? You didn't rely on just one sentence and one phrase on one page? You did rely on everything in the report, didn't you?

A Yes.

Q And if there was information in one portion of this [71] report which amplified upon and extended upon and delineated other information, you considered that as a part of the totality of the information, didn't you?

A Yes, but I don't consider Jack Soble is the sole source of the F.B.I.'s categorical characterization of Ilya Wolston as a Soviet agent.

Q From the content of Page 26 and 27, does there appear to be any source other than Jack Soble?

A Yes.

Q Tell us what that is.

A Well, before, years before, Jack Soble told the United States Government anything, the F.B.I. had information which it considered of sufficient importance that it transmitted it to the State Department, to the effect that probably Wolston was a Soviet agent. That is my construction of that. I interpreted it—

Q Where does it say here that the F.B.I. obtained and transmitted that information to the Department of State?

A Information concerning the probable identification of Wolston as a Soviet agent was furnished to the Department of State in 1951, together with data developed concerning his black market activities in Germany.

Q Does that sentence indicate what the source of that information was, or who the transmitter of that information [72] was, or are you just assuming it was the F.B.I.?

A It does not indicate the source. Obviously, the F.B.I. processed the information. Whether it developed it is not clear, but it is clear the information did not emanate from Jack Soble.

Q That is because of the 1951 dating?

A That's right.

Q When you wrote your book and referred to Ilya Wolston did you give any consideration to identifying

Wolston not as a Soviet agent, but as one who had been probably identified as a Soviet agent?

A No, because he is categorically identified and it would have been misleading to state that.

Q Categorically identified in the other portion of this text?

A Yes, sir.

Q What did you then consider to be Jack Soble's reputation for truth, reliability and veracity?

A I think the information that Jack Soble provided the Government after his ideological defection, or his change of mind, or his decision to cooperate, was extremely useful and [73] proved to be quite reliable in many cases.

Q You said that one of the words that you relied on and considered in connection with your reference to Ilya Wolston was the Boris Morros book. Were you aware of what Boros Morros' view was of Soble's reliability?

A Yes, but I think we are speaking about, in a sense, two different people here—the Jack Soble as a Soviet agent and still under Soviet discipline, who was a professional agent, dissembling by nature and not necessarily immorally in his scheme of ethics as an agent, and then the Jack Soble who for reasons of his own decided to tell what he knew to the United States Government.

Q Were you also aware that Mr. Morros had no information whatever concerning Mr. Wolston other than that which Mr. Soble had provided him with?

A I am not aware of that at all. My impression from the book is that the only source Boris Morros cites is Jack Soble. What else he knew, I do not know.

* * * *

[74] Q To what extent did Katharine Clark assist you in the research and preparation of the book?

A To an enormous extent.

Q Approximately what portion of her time was spent on the book?

A All her time, or almost all. The time spent on other endeavors would have been minuscule.

Q Over the four-plus years in which you were working on it?

A Yes.

Q Do you know whether she ever had anything to do with the collection of information pertaining to Ilya Wolston?

A Yes. Other than the forwarding to me of this Senate Document to which we have often referred, she had nothing to do with the information pertaining to Ilya Wolston.

[77] Q Did you have any knowledge as to what had become of Ilya Wolston after 1968?

A No.

Q Did you ever make any effort to obtain the official court papers dealing with the Ilya Wolston contempt proceeding?

A No.

Q You were aware, were you not, that there were such official court papers?

A I wasn't sure whether they were still extant or not.

Q Did you have any reason to believe that the Government would destroy court records on cases?

A No, but I am just unfamiliar with how long court records are kept, or how accessible they are.

Q Did you ever ask anybody on the Reader's Digest Research Staff to ascertain whether those records still existed?

A No, we felt we had sufficient documentation.

Q Did you ever have occasion to speak to Herbert Kantor, a former Assistant U.S. Attorney, with respect to any content of the book?

A No. Not to my recollection. I have never—I am unfamiliar with the name.

* * * *

PLAINTIFF'S EXHIBIT NO. 1

K G B

THE SECRET WORK OF SOVIET SECRET AGENTS

BY

JOHN BARRON

[SEAL]

READER'S DIGEST PRESS

Distributed by E. P. Dutton & Co., Inc.
New York
1974

It counts heavily upon spies to discern weaknesses in political resolve and military preparedness that Soviet policy can exploit. And while espionage is but one activity of the KGB, it remains the one activity that consumes most of the time of KGB officers abroad and the one most frequently exposed to public view.

Even in 1962, when Khrushchev offered assurances that the Soviet Union did not intend to spy on anyone, the evidence of worldwide Soviet espionage abounded in public records. It had been provided as early as the 1930s by prominent Soviet defectors such as General Alexander Orlov, author of a basic Soviet espionage manual, and by Walter Krivitsky, who tried in vain to warn of high-level penetrations in Western societies. In September 1945 cipher clerk Igor Gouzenko fled the Soviet embassy in Ottawa with the first revelations that the Soviet Union had stolen the secrets of the atomic bomb while engaging in massive scientific and industrial espionage against its wartime allies. Subsequently, royal commissions in Canada and Australia, and official investigations in Great Britain and the United States, demonstrated that Soviet spies had thoroughly infiltrated Western governments, scientific institutions, and intellectual circles.

Among Soviet agents identified in the United States were Elizabeth T. Bentley, Edward Joseph Fitzgerald, William Ludwig Ullmann, William Walter Remington, Franklin Victor Reno, Judith Coplon, Harry Gold, David Greenglass, Julius and Ethel Rosenberg, Morton Sobell, William Perl, Alfred Dean Slack, Jack Soble, Ilya Wolston, Alfred and Martha Stern.* Important agents exposed in Great Britain included the nuclear physicists Klaus Fuchs and Alan Nunn May; the diplomats Guy Burgess and Donald Maclean; and Harold A. R. Philby, a senior British intelligent officer. In 1960 the Senate Internal Security Subcommittee listed thirty-seven proven cases of Soviet espionage against the United States uncovered in the 1950s. And beginning in 1961, Khrushchev, far from curtailing Soviet espionage, intensified it. Each succeeding year has yielded new examples of Soviet attempts to steal the scientific, industrial, military, and political secrets of other nations.

* * * *

CHAPTER IX

Khrushchev quotation: *Soviet Intelligence and Security Services, 1964-1970*, S SSIS, 1972, p. 1.

Early Soviet espionage: Orlov, *Handbook of Intelligence and Guerrilla Warfare*; Krivitsky, *I Was Stalin's Agent; The Report of the Royal Commission*, Ottawa, February 5, 1946; Gouzenko, *The Iron Curtain; The Report of the Royal Commission on Espionage*, Sydney, August 22, 1955.

Soviet agents in U.S.: *Exposé of Soviet Espionage (Prepared by the FBI)*, R SSIS 1960.

Soviet agents in Great Britain: West, *The New Meaning of Treason*; Wise and Ross, pp. 101-103, 113-115.

Drummond: Washington *Evening Star*, September 29, 1962; New York *Times*, September 30, 1962; Washington *Post*, August 16, 1963; interviews with U.S. Department of Defense.

Wennerström: Whiteside, *An Agent in Place*; Washington *Post*, November 30, 1964, and October 7, 1972; *The Wennerstroem Spy Case*, SSIS, 1964.

Solomatin: *The Times* (London), *Daily Express* (London), *Daily Telegraph* (London), March 26, 1964.

Bytchkov and Poluchkin: Montreal *Gazette* and Ottawa *Journal*, May 10, 1965.

Whalen: New York *Times*, July 13, 1966; interview with FBI.

Rinaldi: Washington *Sunday Star*, April 9, 1967; Western security services.

Eitzenberger: *Stuttgarter Nachrichten* (Stuttgart), June 23, 1970; Western security services.

Odantara: *Asahi Evening News* (Tokyo), *Japan Times*, May 14, 1969.

Ryabov and Mamontov: *La Prensa* (Buenos Aires), November 6, 1970; Washington *Evening Star*, November 11, 1970.

Volokov: *Le Figaro* (Paris), May 4, 1973; Western security services.

Makarov and Lobanov: *Berlingske Tidende* (Copenhagen), March 28-30, 1972; Western security services.

Yerofeyev: New York *Times*, April 29, 1973.

* * * *

Wolston, Ilya, Soviet agent in U.S., 188

* * * *

* No claim is made that this list is complete. It consists of Soviet agents who were convicted of espionage or falsifying information or perjury and/or contempt charges following espionage indictments, or who fled to the Soviet bloc to avoid prosecution. The conviction of Judith Coplon was set aside on a legal technicality. However, in ruling that she was entitled to a new trial, Judge Learned Hand stated her guilt was plain. Ultimately, the government dropped the charges because it could not disclose information obtained by wiretap. It might also be noted that Whittaker Chambers, a former *Time* magazine editor who confessed that he had been a Soviet agent, repeatedly charged that Alger Hiss was one of his fellow conspirators. Hiss, who served as an adviser to President Roosevelt at Yalta and later became director of the Office of Special Political Affairs in the State Department, always denied Chambers' allegations. However, Hiss was convicted of perjury on the basis of some of his denials and sentenced to five years' imprisonment.

PLAINTIFF'S EXHIBIT No. 2

BORRIS MORROS

MY TEN YEARS AS A COUNTERSPY

1959

NEW YORK: THE VIKING PRESS

* * * *

On November 3, 1953, I told Jack I was leaving for Europe next day. He came over that afternoon with a copy of the State Department's latest letter about his passport, which he wanted passed on to Korotkov. Though Myra was continuing to insist he give me no more letters to deliver to Korotkov, he wrote another now at my urging.

This was on three sheets of hotel stationery and was written in German in pencil. It was another demonstration of Jack's impressive talent for saying the same things in different words. This one said a mutual friend, Dr. Slanzer, had received a position in one of our best clinics. He was now the leading doctor in one of its departments. To achieve this, he had passed the state examinations after seven and a half months of preparations and trials. Family members were getting along nicely, and some of them might visit Europe in the spring and look up the recipient.

After reading this aloud to me, Jack translated it. "Dr. Slanzer" was Slava, "clinic" the War Department; "seven and a half months of trials and preparations" meant that the State Department had, after much deliberation, finally cleared Slava for work in Europe; "family members" meant Slava and other members of Jack's group.

* * * *

We walked down Sixth Avenue to Tom's Place, a bar that did not look too crowded. There we sat at a table and ordered a drink. One thing quickly became obvious.

Jack intended to keep on stalling, no matter what the consequences. He had alibis galore for not complying with the instructions. In spite of myself, I had to admire how logical and sensible he made these sound.

He was unable to introduce me to Slava because Slava's wife refused to permit such a thing. I must remember that Slava was an important man now. The poor man had been in trouble with the Federal authorities back in 1946 when it was discovered that he had accepted $500 from Chaliapin, our ring's agent in San Francisco —not only accepted the money, but signed a receipt for it! But recently, after a great deal of hard work, Slava had obtained clearance to move to a post in Europe. Mrs. Slava did not wish him to do anything to cause the clearance to be withdrawn. In just two months, if the transfer came through, he would be moving on to a post either in Paris or in Bonn, Germany. He would sail for Europe, if the transfer came through in time, between June 15 and June 30. That would enable Slava to meet me, or any other secret agent designated, in either Paris or Berlin early in July.

Before I had a chance to object to the "ifs" conditioning all this, Jack began to sing the praises of the mysterious Slava. "Slava is tall, handsome, blond, a native-born American, and only thirty-six years old! A linguist too! I'll let you know the moment his transfer comes through," said Jack. "Meanwhile, we'll arrange the details of the rendezvous and parol. If Berlin is the meeting place, Slava will be there in front of the Amfro Hotel at eight p.m. * * *

"They know all about Slava in Moscow," was all I could get him to say. "They ought to remember when Slava gave Chaliapin a whole satchel full of papers back in nineteen forty-five, when the United Nations was formed. And how can they forget his services to them in Alaska and at Cologne?"

He wrote another letter—a ten-page affair—reiterating everything that he had written previously, about his need for money, his passport troubles, and the splendid work his Canadian contacts were doing for him. About the only progress I made was learning that Slava was

his nephew, the son of a sister who had recently died. In the letter Jack stated that this nephew's name was Ilya (not Elliott!) Folston. He also said Wolston had not come to Europe because he had been driven to the verge of insanity by his mother's death. But he was now recovering from his grief, and would leave for Europe very soon.

That defecting might prove the luckiest thing Soble ever did was a thought that occurred to me when I reached Vienna again in October 1954. The first two times I called the usual number—U-47306—there was no answer. The third time a man answered whose voice I did not recognize. He arranged a rendezvous for the following day when I identified myself as "Riabov." But when we met he was so aggressive I suspected that the NKVD had been taken over lock, stock, and barrel by the military.

"You are alone?" he asked, without bothering to identify himself. "I thought you would be with Soble. Or at least with the other one, 'S' " (meaning Slava).

When I tried to explain, he said, "You'd better go on to Moscow. They want to see you there." I pleaded, as usual, that I had too much pressing business to attend to, but that I would be happy to meet Korotkov in Vienna, whenever he could manage a trip to Austria.

* * * *

I next said, "By the way, Jack once told me that you aksed him for money to pay a lawyer who helped you get your passport."

"That makes no sense at all," said Albam, but quite calmly. He quickly explained that he had applied for a passport a few years before. Hearing nothing from the State Department, he had written a letter to Washington and had been informed that the matter was still being investigated.

"It is true that I did consult a lawyer," he said, "and he advised me that my application was probably in the hands of the FBI, but that this was the usual procedure."

Unlike the other espionage agents, Albam was a placid soul. "I am not going to travel abroad, so I need no passport. When I do, the government will probably give

me one." Then he added, and again without rancor, "I cannot understand what has happened to Jack. Why should I make up a story like that about asking for money to pay my lawyer?"

"When I saw Soble in Toronto a few days ago," I said, "he talked a good deal about Ilusha Wolston, his nephew, being dangerously ill with grief over his mother's death."

Albam shook his head. "Jack should turn novelist," he said, "if he is going to tell stories like that. Wolston has been insane for several years, certainly long before his mother's death. Unless I am mistaken, he is too ill mentally to realize his mother is dead. He is a physical wreck, a psychotic who more than occasionally goes beserk. He is also a recluse and lives on a farm most of the time. As though that were not enough, recently I was told by a doctor that he had cancer."

When I questioned Albam about this doctor, he explained that he was Soble's brother, hence Wolston's uncle.

I told Albam that his first assignment from me would be to get Slava's telephone number and address, as well as an up-to-date report on his mental and physical condition.

* * * *

And while this book was being written two events occurred which may prove significant in the FBI's continuing fight against the entire Soviet espionage apparatus in this country. One was the grotesque attempt of Jack Soble to commit suicide by eating a large quantity of nuts and bolts in the machine shop of Lewisburg Penitentiary. As he knew at the time he was about to be taken back to New York to appear before a Federal Grand Jury there I can only assume he was trying to escape giving testimony against former Comrades. I strongly suspect that these are members of other Russian spy rings here whose existence he never revealed to me.

The other was the arrest and indictment for perjury of Mark Zborowski, the man Soble had asked Moscow to get out of the country before he "tell all he knows." A fifty-year-old research assistant in anthropology at

Harvard, Zborowski was accused by the government of lying when he denied before a Federal Grand Jury in New York that he had met Soble between 1944 and 1947. During those three years the Justice Department charged that the pair had more than fifty meetings. As this book was going to press, Zbrowoski's bail, originally set at $20,000, had been reduced to $2500 and his trial was indefinitely postponed. Not long afterward Ilya Wolston, Jack Soble's mysterious "Slava," was given a one-year suspended sentence for contempt of court. He had failed to respond to six subpoenas issued by a Federal Grand Jury in New York. Wolston pleaded guilty but gave mental illness as his excuse.

I know nothing of the activities of these two men except what Soble, a confirmed liar, told me.

* * * *

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 75-459

ILYA WOLSTON, PLAINTIFF,

vs.

READER'S DIGEST ASSOCIATION, INC.,
DOING BUSINESS AS READER'S DIGEST PRESS, ET AL.,
DEFENDANTS

Washington, D.C.
Wednesday, December 10th, 1975

Deposition of:

ILYA WOLSTON,

* * * *

[5] Q When were you born?
A On May the 10th, 1918.
Q And in what country?
A In Russia.

* * * *

[7] Q When did you first meet Jack Soble?
A In my early childhood.
Q Are you related to Jack Soble?
A Yes.
Q What relationship is he to you?
A He is my late mother's brother, so that that makes him my uncle.

* * * *

[10] When, to your knowledge, did Jack Soble travel to the United States for the first time?
A Okay. The whole group, which Jack Soble arranged to come to the United States—not arranged to come to the United States, but to obtain Soviet exit visas. They arrived in 1941.
Q When you say "they," can you be more specific? Was it that whole family that you listed before?
A About ten people, to the best of my recollection, roughly speaking, I think it engulfed the people.

Q Can you name any of those people?
A My mother—the ones that I am sure of are my mother, my sister, Jack Soble, Myra Soble—

* * * *

[56] Q You are aware, I assume, of the Grand Jury proceedings that took place in the Southern District of New York in the years 1957 and 1958 to investigate acts of espionage or alleged acts of espionage by Soviet agents in the United States?
A I am.
Q When were you first aware that Federal agents or investigators were interested in obtaining information from [57] you and from your wife with respect to the espionage investigation?
A On the day that Jack Soble and Myra Soble were arrested.

* * * *

[59] Q Was Jack Soble finally indicted after his arrest?
A Yes.
Q What was he indicted for?
A For espionage. I believe he confessed.
Q Were any other of your family indicted for any crimes by that Grand Jury sitting in the Southern District?
A His wife Myra.
Q Anyone in your immediate family in terms of blood?
A No. No, she was not blood. No. No. No. No.
Q But, to your knowledge, were other persons indicted for espionage by that Grand Jury sitting in the Southern District?
A My uncle's wife, Dina. I guess that is it.
Q Did Jack and Myra Soble eventually plead guilty to committing espionage?
A I think so. I believe, yes.

* * * *

[60] Q Did you on July 1st, 1958, fail to appear in response to a subpoena served to you by a Grand Jury sitting in the Southern District of New York?

A I don't know whether it was July 1st, but I did fail to appear in response to one subpoena after appearing on four or five occasions, I believe.
Q Was there a contempt motion filed by the government on the basis of your failure to appear?
A Yes.
Q Did you plead guilty—
A Yes.
Q —to criminal contempt—
A Yes.
Q —with regard to that motion?
A Yes.
[61] Q Was that in August of 1958?
A Possibly.
Q Were you sentenced as a result of that plea?
A One year suspended; three year probation.

* * * *

[74] Q I am adding, Mr. Wolston, a book entitled "My Ten Years as a Counterspy" by Boris Morros. This document has already been included and is part of the deposition of the plaintiff. It was Plaintiff's Exhibit No. 4, and I think in order to avoid confusion I would like to continue to refer to it as Plaintiff's Exhibit No. 4 if that is all right with counsel.
MR. DICKSTEIN: By all means.

BY MR. HAMILTON:

Q Why don't you take some time to take a look at the book, Mr. Wolston?
A I am familiar with this book.
Q You are familiar with it?
A (Nodding head affirmatively).

* * * *

[77] Q Do you know of your own recollection now, without reviewing the book—
A Yes.
Q —what statements are in the book concerning your name?
A In one place Morros says that Soble told him that Slava was Ilya Wolson, his nephew.

Q And, to your knowledge, when he was referring to Slava, what person was he describing?

A I don't know. According to the book the inference is that that was a code name for me.

Q And a code name in what respect? A code name for what [78] kind of association?

A As being a member of his ring.

Q And his ring is what kind of ring?

A Espionage!

Q Do you know with any more specificity what other comments were made about you in this book other than the reference to Ilya Wolston as Slava?

A A reference that impressed me most is the concluding comment by Morros that anything that he has stated about Ilya Wolston or Slava he learned from Jack Soble, a confirmed liar.

Q You are reading from the book now, is that correct?

A No, I am not. I am not reading. I know it by heart.

Q Are there any other comments about you in the book that you recall of your own knowledge without referring to the book?

A (Witness closes book).

I think that somewhere in the book Morros says that Soble told him that I had risen in my position and had become a very important man.

* * * *

[79] Q When you became familiar with the comments about you in this book to the extent that you generally knew them as described to you just now, what were your reactions to those statements?

MR. DICKSTEIN: What did he do or what were his mental reactions?

MR. HAMILTON: No. 1, what were his mental reactions, [80] yes.

THE WITNESS: My mental reaction was that my hatred and despising of Jack Soble increased manifold for having brought upon me and upon other members of the family such unbelievable disgrace. And also the extent to which he went in fabricating this whole mess.

BY MR. HAMILTON:

Q So your state of mind was that you were angry at Soble, is that correct?

A Extremely.

Q You were distraught, is that correct?

A Yes, to put it mildly.

Q But to take the second half of the question posed by counsel, did you take any action on the basis of having learned of these statements about you in the book?

A No.

Q You took absolutely no action whatsover?

A No.

Q You never wrote the publisher of the book?

A No.

Q You never filed a libel suit?

A No.

* * * *

[82] MR. HAMILTON: Okay. We are back on the record.

I would like to move from the Morros book to another document which was also introduced as Exhibit No. 2 in the deposition of John Barron, and that is a Senate report entitled "Exposé of Soviet Espionage, May 1960."

* * * *

[87] Q Have you, since you have become aware of this document?

A Yes.

Q —written the FBI or the Senate Judiciary Committee or made any contact with either of those government agencies with respect to this report—

A No.

Q —or with respect to the statements made about you in the report?

A No, sir.

Q Have you issued any kind of a public denial of those statements—

A No, sir.

Q —if you feel they are false?

* * * *

[103] Q Now we are only interested in this lawsuit presumably and what, if any, effect Mr. Barron's statements have been.

A I understand that. Okay.

I would have to put it this way then: that I consider the book by Mr. Barron an extension of everything that happened since '57, the end result.

* * * *

[107] Q Do you feel that the author, John Barron, bears any animosity towards you—

A No.

Q —as an individual?

A No.

Q Do you feel that when he wrote the statements in the [108] book that he did about you that he felt he was making false statements?

A I don't think so. I think he was somewhat—that he took a lot of things too much granted without going to the people.

Q But it is not your contention that he knew that he was making false statements about you and, nonetheless, went forward with them?

A Knowing about the Morros book and about the whole thing I believe that he should not have called me what he called me.

* * * *

DEFENDANTS' EXHIBITS 2-16

N.Y. Times July 15, 1958

SPY INQUIRY HUNTS NEPHEW OF SOBLE

Contempt Action Threatened for Failure to Heed Grand Jury Summons Here

A search is on for Ilya Wolston, a nephew of the confessed Soviet spy Jack Soble, for failing to appear before a grand jury investigating espionage.

Federal Judge Edward J. Dimock signed an order yesterday afternoon calling upon Wolston to show cause on July 28 why he should not be held in contempt for ignoring a subpoena.

The order was requested by Assistant United States Attorney Herbert C. Kantor of the criminal division. It was sent by special messenger to the United States Marshal's office in Washington, where Wolston has a home at 4884 MacArthur Boulevard. However, his whereabouts are unknown. Soble is serving a seven-year prison sentence in Lewisburg, Pa.

Mr. Kantor said the Government had taken great care to make sure that Wolston had in fact received the subpoena in question.

"We checked and rechecked the circumstances, and we know that he was served the subpoena by a deputy marshal and that therefore he had full knowledge of a command to appear to give evidence," Mr. Kantor said.

The 40-year-old native of Lithuania did testify on three occasions before an espionage grand jury in February and March of last year.

When Wolston testified in 1957, Soble had just been arrested. The latter and his wife, Myra, confessed in April and pleaded guilty to transmitting defense secrets.

Wolston entered this country in 1939 and was naturalized four years later. He had been in contact with the Sobles in Europe and the United States for a long time before the Sobles were arrested by the Federal

Bureau of Investigation after a ten-year study of the espionage situation, according to Mr. Kantor.

Wolston is sought now to testify about an alleged "general criminal conspiracy against the United States," it was said.

Wolston was inducted into the United States Army on April 20, 1942, and assigned to a military intelligence training center at Camp Ritchie, Md. He served variously as an interpreter and was discharged from the Army in 1946.

Wolston was said to have married a Polish woman named Christina in Europe ten years ago.

N.Y. Journal American July 15, 1958

SOBLE NEPHEW FACING JAIL IN SPY QUIZ SNUB

The Lithunian-born nephew of convicted Soviet spy Jack Soble faced a possible jail sentence for contempt today for ignoring a subpoena ordering his appearance before a U.S. grand jury probing espionage.

Ilya Wolston, 40, Washington, was given to July 28 to show cause why he shouldn't be penalized for failure to appear July 1 as ordered. He apparently disappeared June 30.

Asst. U.S. Atty Herbert C .Kantor told Federal Judge Edward J. Dimock yesterday that Wolston's whereabouts were unknown. He said the missing man could give the grand jury "valuable information."

Born in the same village as his uncle, Wolston came to the U.S. in 1939, was naturalized in 1943, inducted into the Army and was assigned to military intelligence.

Wolston served as a liaison interpreter between American and Russian pilots in Alaska until 1945 when he went to San Francisco as an interpreter for the American delegation at the UN conference. He later worked for the American Military Government.

N.Y. Times July 29, 1958

CONTEMPT IS LAID TO NEPHEW OF SPY

Ilya Wolston, a nephew of the confessed Soviet spy Jack Soble, was in Federal court yesterday charged with contempt for failure to appear before a grand jury investigating espionage.

Wolston, a 40-year-old native of Lithuania, spent most of his time in court a picture of dejection, either sitting in the back or standing before Judge John M. Cashin. He was described by his attorney, Sidney Dickstein, as being on the verge of suicide.

Herbert C. Kantor, Assistant United States Attorney, told the court that Wolston had ignored five subpoenas since early last year and had showered his office with letters from physicians, telephoned excuses and visits from his wife.

Mr. Dickstein made one move to save his client. The grand jury that had indicted the Sobels and had tried to get Wolston to testify was present in the courtroom. It was suggested that it take advantage of Wolston's presence, but the move was promptly rejected. The jurors were on hand to be dismissed after working through seventy sessions in the last eighteen months.

York Herald Tribune July 15, 1958

U.S. CONTEMPT WRIT FACING KIN OF SOBLE

The Federal government moved yesterday to have a nephew of Jack Soble, confessed Soviet spy, punished for contempt on the grounds that he failed to appear on July 1 before a special Federal grand jury investigating espionage.

Assistant United States Attorney Herbert C. Kantor obtained from Judge Edward J. Dimock in United States District Court an order directing Ilya Wolston, a Lithunaian-born former Army interpreter of Russian, to show cause why he should not be cited for contempt

for failing to comply with a subpoena demanding his appearance. The show cause order directed Wolston to appear on July 28.

Mr. Kantor said that Wolston appeared before the jury three times in February and March, 1957, but failed to show when called again.

Efforts to reach Wolston at his home in Washington, D.C., were of no avail, it was reported, and his whereabouts are unknown. Mr. Kantor said that Wolston and Soble, who is now serving a seven-year sentence for heading a Soviet spy ring, were in contact for a long period before Soble's arrest in January, 1957.

New York Mirror July 15, 1958

HUNT SOBLE KIN FOR SPY DATA

The Federal government began a search yesterday for a Lithuanian-born nephew of convicted Soviet spy Jack Soble who failed to appear before a special Federal grand jury in the U.S. Court House here.

Assistant U.S. Attorney Herbert Kantor obtained an order from Federal Judge Dimock calling on Ilya Wolston, 40, whose last known address was 4884 MacArthur Blvd., Washington, to show cause July 28 why he should not be punished for contempt.

Wolston, whose whereabouts now are unknown, had been served with a subpeona to appear for questioning here July 1. Kantor disclosed that Wolston, naturalized in 1943, made three appearances before the spy grand jury in February and March-1957.

KANTOR SAID Wolston had been in contact with his uncle, Soble, in Europe and the U.S. for a long period before Soble's arrest in January 1957. Soble now is serving a seven-year term in Lewisberg, Pa., for admittedly heading a spy ring which funneled government secrets to Russia.

Wolston, Kantor said, was wanted to testify about an alleged violation of the U.S. code dealing with a "general criminal conspiracy against the U.S.," Kantor added:

"It is believed he has information which would be material to the inquiry currently being conducted by the spy grand jury."

Wolston was inducted in the U.S. Army April 20, 1942, and assigned to the military intelligence training center at Camp Ritchie, Md. Later he served in Alaska as liaison interpreter between Russian pilots and the Army Transport Command, then supplying military planes to Russia. Still later he was a liaison interpreter for the military government in Germany and in the office of the U.S. High Commissioner of Germany.

Washington Evening Star July 15, 1958

COURT CALLS SPY'S NEPHEW

Ilya Wolston, 40, of the 4800 block of MacArthur boulevard N.W., nephew of convicted spy Jack Soble, has been ordered to appear in a New York Federal Court on July 28 to show cause why he should not be cited for contempt of a grand jury.

The action, the Government said, was based on Wolston's failure to appear July 1 before a special Federal grand jury investigating espionage.

Federal Judge Edward J. Dimock signed an order yesterday calling on Wolston to appear on July 28 for ignoring a subpoena to appear before the jury.

Assistant United States Attorney Herbert C. Kantor, who requested the contempt writ told Judge Dimock it is believed Wolston has information which would be material to the inquiry that is currently being conducted by the spy grand jury. Wolston, a Luthuanian-born former U.S. Army interpreter of Russian, appeared before the jury in February and March in 1957.

Soble, also Lithuanian-born, is serving a seven-year sentence in the Lewisberg, Pa., Federal prison for heading a spy ring that sent vital government secrets to the Soviet Union. His wife, Myra, also was jailed for spying.

New York Herald Tribune August 14, 1958

SOBLE'S NEPHEW SENTENCED

A one-year suspended sentence was imposed yesterday on Ilya Wolston, nephew of the convicted spy Jack Soble, by Judge John Cashin in United States District Court. Wolston was sentenced for contempt of court and failure to appear before a grand jury investigating espionage.

Wolston's sentence also included three years probation. The suspended sentence was conditioned on his appearing before another grand jury investigating espionage if one is established.

New York Daily News 14 Aug. 1958

SETS SOBLE KIN FREE . . . IF HE'LL TALK ON SPIES

A one-year suspended sentence was imposed yesterday in Federal Court on Ilya Wolston, 40, nephew of confessed Soviet spy Jack Soble, for contempt of court in failing to appear before a grand jury probing espionage.

Judge John Cashin also put Wolston on three years probation, conditional on his testifying before another spy panel when and if it is established. "I say to you, sir, that any failure will be a violation of probation," Cashin said.

A New Jury Possible

Cashin said he had been informed by the U.S. attorney's office that another grand jury may be impaneled. However, U.S. Attorney Arthur Christy refused to comment.

Wolston, a former Army intelligence specialist and liason man with Russian occupation forces in Germany, pleaded guilty at a hearing last week. In all, Wolston, who lives in Washington, failed to answer six grand jury subpoenas, every time claiming mental illness.

N.Y. News 8 Aug. 1958

SOBLE KIN ADMITS HE SNUBBED SPY PROBE

Ilya Wolston, 40, nephew of confessed Soviet spy Jack Soble, abruptly pleaded guilty yesterday to failing to comply with a federal court order to appear before a grand jury investigating espionage.

Wolston's surprise move came in Federal Court before Judge John Cashin after a 40-minute recess during which Wolston conferred with his attorney, Sidney Dickstein, and with Cashin. The judge set 2 P.M. next Wednesday for sentencing.

The recess was called when Wolston's wife, Mrs. Christine Wolston, broke down and wept while describing how she cared for her husband after he got electric shock therapy for the illness which prevented him from appearing before the grand jury.

Faced Contempt Charge

The testimony was given during a hearing on a government order directing Wolston to show cause why he should not be held in contempt for failing to honor grand jury subpenas.

Preceding Mrs. Wolston on the stand, Assistant U.S. Attorney Herbert Kantor described how Wolston had appeared before the grand jury twice, in January and February 1957, before the arrest of Soble and his wife, Myra, but how since the arrest, he had spurned six subpenas, pleading illness and providing doctors' certificates.

N.Y. Tribune 29 July, 1958

JUDGE REJECTS OFFER TO TESTIFY BY SOBLE NEPHEW

Judge John Cashin rejected yesterday in United States District Court an offer by Ilya Wolston, Lithuanian nephew of Jack Soble, convicted spy, to testify before a grand jury investigating espionage in order to purge himself of possible contempt of court.

In reserving decision on whether Wolston was in contempt, Judge Cashin said that "there is no question in my mind that there was a studied attempt to avoid appearance before this grand jury." He set Thursday for a hearing on the matter and dismissed the grand jury, which completed yesterday its statutory term of eighteen months.

Wolston's attorney, Sidney Dickstein, pleaded that his client did not appear before the grand jury because he was "a sick man with suicidal tendencies." Herbert Kantor, Assistant United States Attorney, said that Wolston failed to appear in answer to five different subpoenas, every time submitting a doctor's certificate the day before his scheduled appearance.

Wash. Post & Times Herald 16 July 1958

KIN OF SOBLE FACES QUIZ ON CONTEMPT

Ilya Wolston, of 4884 MacArthur blvd., a nephew of convicted Soviet spy Jack Soble, faces Federal contempt proceedings for his failure to appear July 1 before a grand jury in New York investigating espionage.

The United States Marshal's office here had an order yesterday for service on Wolston directing him to show cause why he should not be cited for contempt. The order was issued in New York by Federal Judge Edward J. Dimock and sent here by special messenger.

Reached at home, Wolston denied knowledge of either the July 1 subpoena or the "show-cause" order. He would not comment further.

Neighbors said Wolston, 40, is a quiet, friendly man who moved into the MacArthur blvd. apartment a year ago. He lives with his wife, Christine.

Assistant United States Attorney Herbert C. Kantor, of New York, said today before Wolston's scheduled testimony, a lawyer phoned his office and said Wolston was too ill to appear. Kanton said Wolston has not contacted the office since.

Wolston, born in the same Lithuanian village as Soble, appeared before the grand jury in February and March, 1957. Kantor said he is believed to have information material to the spy inquiry.

Soble is serving a seven-year term in Federal prison in Lewisburg, Pa. Wolston, according to Kantor, was in frequent contact with Soble.

N.Y. News 15 July 1958

SOBLE NEPHEW FACES RAP FOR PROBE DODGE

By NORMA ABRAMS

A Lithuanian-born nephew of convicted Soviet spy Jack Soble—Ilya Wolston, 40, of 4884 MacArthur Blvd., Washington, D.C.—faced a federal crackdown yesterday for ignoring a subpena ordering him to appear July 1 before the special U.S. grand jury here which has been investigating espionage.

At 4:15 P.M., on request of Assistant U.S. Attorney Herbert C. Kantor, Federal Judge Edward J. Dimock issued an order directing Wolston to show cause July 28 why he should not be punished for contempt.

A special messenger took a copy of the order to the U.S. marshal in Washington for service on Wolston, who had testified before the grand jury in February and March, 1957.

Soble currently is serving a seven-year term in Lewisburg, Pa., Federal Prison for heading a spy ring here. Wolston, according to Kantor, was in frequent contact with Soble both in the U.S. and in Europe before Soble's arrest in January, 1957.

A Lawyer Called

June 30, an attorney who said he was acting on behalf of Wolston, phoned the U.S. attorney's office and said Wolston might not be able to show on July 1 because of illness. He did not show—and obviously authorities are not pleased with his failure to contact them later.

Born in the same Lithuanian village as his uncle, Wolston came to the U.S. in 1939, was inducted into the Army on April 20, 1942, and was assigned to the military intelligence training center at Camp Ritchie, Md. He became a U.S. citizen by naturalization in 1943.

As a soldier, Wolston was a liaison interpreter between Americans and Russian pilots in Alaska from October, 1943, to June, 1945. He later served as an interpreter between the American crew which flew the Russian delegation to the UN conference in San Francisco in June, 1945, and the delegation. He was honorably discharged from the Army in January, 1946.

N.Y. Times Aug. 14, 1958

NEPHEW OF SOBLE PUT ON PROBATION

Ilya Wolston, a nephew of Jack Soble, convicted Soviet spy received a one-year sentence yesterday for contempt of court and failure to appear before a Federal grand jury investigating espionage. The sentence was suspended.

Judge John M. Cashin placed Wolston on probation for three years. He ordered that Wolston must appear before another espionage grand jury if it is established, or serve the one-year jail term.

Wolston, a former Army intelligence specialist and liaison man with the Soviet occupation forces in Germany, pleaded guilty to the contempt charge.

The New York Times, August 8, 1958

NEPHEW OF SOBLE ADMITS CONTEMPT

Ilya Wolston, a nephew of confessed Soviet spy Jack Soble, interrupted a contempt of court hearing yesterday to plead guilty.

Wolston, 40-year-old native of Lithuania, was charged with contempt after he had failed on three occasions to testify before a Federal grand jury investigating espionage.

The defendant and his wife, Mrs. Christine Wolston, had appeared before the grand jury on three occasions prior to Soble's pleading guilty. Wolston failed to honor three subpoenas after the guilty plea. Soble is serving a seven-year sentence.

Wolston contended that he had been unable to appear before the grand jury because he was suffering from a mental illness. In yesterday's hearing Mrs. Wolston was the defendant's first and only witness. She broke down during cross examination by Herbert C. Kantor, assistant United States Attorney. A recess was called and a short while later Wolston pleaded guilty.

Federal Judge John M. Cashin will sentence Wolston Wednesday. Under Federal rules the term of sentence is entirely within the discretion of the judge.

New York Daily News, July 29, 1958

SPY NEPHEW'S PLEA TOO LATE, COURT DECIDES

Federal Judge John Cashin yesterday rejected a last-minute offer by Ilya Wolston, 40, nephew of confessed Soviet spy Jack Soble, to testify before a grand jury investigating espionage and thus clear himself of a possible contempt of court rap.

The judge set a hearing on the contempt motion for Thursday and dismissed the grand jury, which completed its 18-month term yesterday.

Assistant U.S. Attorney Herbert Kantor told the court that Wolston appeared before the grand jury twice, in January and February, 1957, before the arrest of Soble and his wife, Myra.

Made Medical Plea

But since their arrest, Kantor said, Wolston failed to appear on five different occasions, each time submitting a doctor's certificate on the day before his scheduled appearance.

Judge Cashin said there was "no question in my mind that there was a studied attempt to avoid an appearance before this grand jury."

The Sobles were indicted by the same grand jury and pleaded guilty in April, 1957. Since then they have been cooperating with the government in uncovering espionage. Soble is serving a 7½-year sentence and his wife a 5-year-term.

"Suicidal Tendencies"

Wolston's attorney, Sidney Dickstein, asserted that his Lithuanian-born client did not go before the grand jury because he was "a sick man with suicidal tendencies," and asked that he be heard yesterday.

Wolston came to the U.S. in 1939 and was inducted into the Army in 1942. Kantor said that Wolston was in frequent contact with Soble both in the U.S. and Europe before Soble's arrest as head of a spy ring.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 75-459

ILYA WOLSTON, PLAINTIFF,

v.

READER'S DIGEST ASSOCIATION, INC., doing business as READER'S DIGEST PRESS, ET AL., DEFENDANTS.

District of Columbia) ss.

AFFIDAVIT OF JOHN BARRON

I, JOHN BARRON, being duly sworn, depose and say as follows:

1. I am a Senior Editor in The Reader's Digest Association, where I have been employed since 1965. From 1957 to 1965, I was a reporter for the *Washington Evening Star* newspaper.

2. During my career in journalism I have received numerous honors and awards, including the George Polk Memorial Award for national reporting; the Raymond Clapper Award for the most outstanding Washington correspondence in 1964; The Washington Newspaper Guild Grand Award of 1965 and the Newspaper Guild Front Page Award for investigative reporting. Additionally, I have received an award from the American Political Science Association for "distinguished reporting of public affairs."

3. From 1969 through 1972 I devoted full time to researching and writing the book *KGB: The Secret Work of Soviet Secret Agents* (hereinafter "*KGB*"), which was published by The Reader's Digest Press in 1974. After the final text of *KGB* was written, professional researchers, under my direction, reviewed each line to ensure that it accurately reflected and could be sustained by the research data accumulated during preparation of the book. To allow readers to assess the

accuracy of the work, I, with the assistance of the researchers, compiled extensive Chapter Notes citing the sources of each substantive passage of the book. On the basis of my research and the verification process described above, I was confident upon publication of *KGB* that the book as a whole and each and every statement in it were true, and I was aware of no fact that tended to make me doubt the truth of the book or of any statement in it.

4. In the course of researching and writing *KGB*, I obtained a copy of the Report entitled "Expose of Soviet Espionage, May 1960" (hereinafter "FBI Report"), which was prepared by the Federal Bureau of Investigation and published on July 2, 1960 by the Internal Security Subcommittee of the Senate Judiciary Committee. A copy of the FBI Report is included as an attachment to this Affidavit. On page 24 of the FBI Report the individual Ilya Wolston is identified as a Soviet intelligence agent. The FBI Report also states on pages 26 and 27 that Jack Soble furnished information in 1957 identifying Ilya Wolston as a Soviet agent and that information concerning the probable identification of Ilya Wolston as a Soviet agent was furnished to the State Department in 1951. After reviewing the FBI Report, I relied upon it as documentation for the statement in Chapter IX of *KGB* that Ilya Wolston was among those identified as Soviet agents in the United States, and I cited this Report in the "Chapter Notes" accompanying Chapter IX of *KGB*. At no time have I been aware of any fact that would give me reason to doubt the truth of the FBI Report or any statement in it.

/s/ John Barron
JOHN BARRON

District of Columbia, ss:

Subscribed and sworn to before me this 5th day of April, 1976.

/s/ Harolin W. Mills
Notary Public

86th CONGRESS *2d Session* SENATE No. 114 DOCUMENT

EXPOSE OF SOVIET ESPIONAGE MAY 1960

PREPARED BY THE

FEDERAL BUREAU OF INVESTIGATION
UNITED STATES DEPARTMENT OF JUSTICE

J. EDGAR HOOVER, *Director*

TRANSMITTED BY DIRECTION OF

THE ATTORNEY GENERAL

FOR USE OF THE

SUBCOMMITTEE TO INVESTIGATE THE ADMINISTRATION OF THE INTERNAL SECURITY ACT AND OTHER INTERNAL SECURITY LAWS

OF THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE
EIGHTY-SIXTH CONGRESS
SECOND SESSION

[SEAL]

JULY 2, 1960.—Ordered to be printed

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S. Res. 345

IN THE SENATE OF THE UNITED STATES,

July 2, 1960.

Resolved, That there be printed as a Senate document a summary of known Soviet espionage cases in the United States over the past fifteen years, published by the Internal Security Subcommittee of the Committee on the Judiciary of the Senate and heretofore printed as a committee print under the title "Exposé of Soviet Espionage".

SEC. 2. There shall be printed an additional thirteen thousand copies of such document for use of the Senate Committee on the Judiciary.

TABLE OF CONTENTS

		Page
1.	INTRODUCTION	1
2.	ACQUISITION OF AERIAL PHOTOGRAPHS	1
3.	RECRUITMENT OF AMERICANS	3
4.	THE INTELLIGENCE ROLE OF THE SOVIET-BLOC OFFICIALS	5
5.	INDUSTRIAL SPYING AND CIRCUMVENTION OF REGULATIONS	5
6.	EXPLOITATION OF PUBLIC INFORMATION	6
7.	PROPAGANDA AND PERSONAL APPEARANCES	9
8.	USE OF THE UNITED NATIONS	9
9.	"ILLEGAL" OPERATIONS	9
10.	INTERNATIONAL ASPECTS OF SOVIET ESPIONAGE	10
11.	AIMS OF INTERNATIONAL COMMUNISM	11

APPENDICES

I.	CASES INVOLVING COURT ACTION DURING THE PAST DECADE	13
	A. Soviet Infiltration of the United States Government	13
	a. Testimony of Elizabeth Bentley	13
	1. Edward Fitzgerald	14
	2. William Ludwig Ullman	15
	3. William Walter Remington	15
	b. Testimony of Whittaker Chambers	16
	1. Alger Hiss	16
	2. Franklin Victor Reno	17
	B. Coplon—Gubitchev Case	17
	C. Fuchs—Gold—Rosenberg Atomic Espionage Conspiracy	18
	1. Harry Gold	18
	2. David Greenglass	19
	3. Julius and Ethel Rosenberg	19
	4. Morton Sobell	20
	5. William Perl	21
	6. Alfred Dean Slack	21
	7. Abraham Brothman	21
	8. Miriam Moskowitz	21
	9. Anatoli Yakovlev	22
	10. Semen Markovich Semenov	22
	D. Otto Verber—Kurt Ponger Case	22
	E. Clarence Howard Vetterli Case	23

F. Jack Soble Case 24
1. Jack and Myra Soble 24
2. Jacob Albam 25
3. Jane and George Zlatovski 25
4. Alfred and Martha Stern 26
5. Ilya Wolston 26
6. Mark Zborowski 27
7. Vassili Molev 27
8. Mikhail Nikolaevich Svirin 27
G. Colonel Rudolf Ivanovich Abel Case 28
1. Reino Hayhanen 28
2. Colonel Rudolf Ivanovich Abel 28
3. Roy Adair Rhodes 29
II. SOVIET NATIONALS DECLARED PERSONA NON GRATA OR OTHERWISE REMOVED FROM THEIR OFFICIAL ASSIGNMENTS IN THE UNITED STATES FROM JANUARY 1, 1950, THROUGH MAY 1, 1960 30
A. Yuri Vasilyevich Novikov 30
B. Igor Aleksandrovich Amosov 30
C. Aleksandr Petrovich Kovalev 31
D. Leonid Igorovich Pivnev 32
E. Maksim Grigorievich Martynov 32
F. Aleksandr Konstantinovich Guryanov 33
G. Ivan Aleksandrovich Bubchikov 33
H. Boris Fedorovich Gladkov 33
I. Rostislav E. Shapovalov 33
J. Viktor Ivanovich Petrov 34
K. Konstantin Pavlovich Ekimov 34
L. Yuri Pavlovich Krylov 34
M. Vassili Mikhailovich Molev 35
N. Vladimir Arsenevich Grusha 35
O. Gennadi Fedorovich Mashgantsev 36
P. Nikolai Ivanovich Kurochkin 36
Q. Kirill Sergeevich Doronkin 37
R. Evgeni Alekseevich Zaostroutsev 37
S. Vadim Aleksandrovich Kirilyuk 38
III. INTERNATIONAL ASPECTS OF SOVIET ESPIONAGE AGAINST THE UNITED STATES 39
A. Dr. Alan Nunn May 39
B. Sam Carr 39
C. Ignacy Samuel Witczak 40
D. Emil Julius Klaus Fuchs 40
E. Pontecorvo, Burgess and Maclean 41

SOVIET-BLOC INTELLIGENCE ACTIVITIES

1. *INTRODUCTION*:

Recent Soviet propaganda has denounced the United States for aerial reconnaissance of the Soviet Union in terms designed to convince the world that the USSR would not stoop to espionage. In discussing this subject and the reception which President Eisenhower might expect on his visit to Russia, Premier Khrushchev was quoted in the newspapers on May 11, 1960, as wondering what would have been the reaction of the American people if the Russians had sent a plane over the United States on the eve of his visit to this country.

The facts are that at the very time Premier Khrushchev was advancing to the podium to speak before the United Nations General Assembly on September 18, 1959, two Soviet espionage agents were cautiously surveying a street corner in Springfield, Massachusetts, in preparation for a clandestine meeting with an American whom they were attempting to subvert. At the very time that Khrushchev was declaring that a means must be found to stop mankind from backsliding into an abyss of war, Vadim A. Kirilyuk, Soviet employee of the United Nations, was attempting to induce this American to furnish information regarding United States cryptographic machines and to secure employment in a vital United States Government agency where he could obtain classified information for the Russians. While this meeting was taking place Kirilyuk and the American were under observation by Leonid A. Kovalev, another Soviet employee of the United Nations who was conducting a countersurveillance. Unknown to the Russians, however, this meeting was also being observed by Special Agents of the FBI who obtained photographs of the Russians.

Not only did these Russians stoop to spying, but they callously abused their status as guests of this country to spy in the most reprehensible manner—the subversion of an American on American soil.

Although FBI Agents observed the meeting and photographed the Russians, no publicity was given to this incident in view of the negotiations which were then in progress. This incident, as contrasted with the recent

handling of the plane incident by the Russians, gives ample testimony as to which country is acting in good faith in trying to maintain world peace.

And this is not an isolated incident—nor has the target always been so limited. The facts are that Soviet agents for three decades have engaged in extensive espionage against this country, and through the years have procured a volume of information which would stagger the imagination. This information includes literally dozens of aerial photographs of major U.S. cities and vital areas which have given the Russians the product of aerial reconnaissance just as surely as if Soviet planes had been sent over this country.

2. *ACQUISITION OF AERIAL PHOTOGRAPHS*:

In a free country such things as aerial photographs are available to the public and can be purchased commercially. The Soviets have been fully aware of this and throughout the years have taken full advantage of this free information, collecting aerial photographs of many areas of the United States.

For example, during October, 1953, two Soviet officials visited Minneapolis where they purchased fifteen aerial photographs of Minneapolis and St. Paul. In October and November, 1953 two Soviets traveled in Missouri and Texas and the surrounding areas covering a Naval air station, an Army airfield, and an Air Force base. In April, 1954, a Soviet official purchased aerial photographs of five Long Island communities. Also, in April, 1954, a Soviet official purchased three aerial photographs of Boston, Massachusetts, and Newport, Rhode Island, areas. In May, 1954, three Soviets traveled to California where they ordered from a Los Angeles photography shop $80 worth of aerial photographs covering the Los Angeles area.

However, they have not been content with acquisition of publicly available data. For example, on May 3, 1954, Leonid E. Pivnev, as assistant Soviet air attache stationed in Washington, who had previously traveled extensively throughout the United States and had obtained commercially available aerial photographs of various areas of this country, requested a Washington, D.C., photographer to rent an airplane to take photographs of New York City which were not commercially available. He specified the scale to be used and the altitude from which the photographs were to be taken. He offered $700 for this activity. Obviously the photographs which he requested would depict vital port areas, industrial facilities, and military installations in the New York area.

For this brazen abuse of his diplomatic privileges Pivnev was declared persona non grata on May 29, 1954, and deported from this country on June 6, 1954.

But this did not stop the Soviets. They continued their systematic program of collecting aerial photographs of major cities and vital areas of the United States. On January 19, 1955, the State Department sent a note to the Soviet Ambassador placing restrictions on the acquisition of certain types of data by Soviet citizens in the United States. These restrictions were comparable to restrictions on American citizens in Russia and in part prohibited Soviet citizens from obtaining aerial photographs except where they "appear in or are appendices to newspapers, periodicals, technical journals, atlases and books commercially available to the general public."

Soviet reaction to the restrictions was typical of their philosophy. They began circumventing the restrictions by subverting Americans to purchase aerial photographs for them. One month after the restrictions became effective, Nikolai I. Trofimov, a Soviet official in Mexico, began negotiations for a resident of the west coast of the United States to obtain aerial photographs of 45 major United States cities. Nineteen of these cities are located near Strategic Air Command bases. The remaining 26 are all strategic cities in or near which are located air bases, naval bases, research or training stations, atomic energy installations or important industrial facilities.

During April, 1958, Vladimir D. Loginov, a Soviet employee of the United Nations used the same technique to obtain an aerial map of New York City. At 10 p.m. on April 26, 1958, Loginov secretly met an individual in

a darkened parking lot at the railroad station in Scarsdale, New York, where this map was delivered to Loginov. Months later on November 15, 1968, this same parking lot was again utilized by the Soviets to obtain aerial photographs of Chicago, Illinois. On this occasion, the photographs were turned over to Kirill S. Doronkin, another Soviet employee of the United Nations. In this same operation, the Soviets attempted to obtain aerial photographs of Portland, Oregon; Seattle, Washington; and San Diego and San Francisco, California.

Circumvention of the restrictions also took the form of trickery and deceit. For example, on July 17, 1959, Viktor V. Fomin, assistant Soviet military attache in Washington, D.C. obtained an aerial photograph of the Glasgow Air Force Base in Montana from the local Chamber of Commerce by posing as tourists without identifying themeselves as Soviet officials. On July 24, 1959, they obtained an aerial photograph of Thermopolis, Wyoming, by bullying the clerk at the Chamber of Commerce in an arrogant and insistent manner again posing as tourists. They were given the photograph in spite of the fact that such a photograph is not normally given to tourists.

It is apparent from the examples cited that the Soviet Union reaps the benefits of aerial reconnaissance of the United States just as surely as if planes were sent over this country.

3. *RECRUITMENT OF AMERICANS*:

The acquisition of aerial photographs is only one phase of Soviet-bloc intelligence activity in the United States, but the manner in which it has been done illustrates two basic Soviet intelligence concepts; namely, to exploit the weakness of Americans whenever possible and to take full advantage of all the freedoms of our democratic society.

Following these concepts, the Soviets through the use of such devices as entrapment, blackmail, threats, and promises have exploited human frailty. The record is replete with examples of such exploitation of Americans throughout the years following the Russian Revolution

in 1917. For example, Nicholas Dozenberg, a naturalized American, first became associated with the communist movement about 1920. In 1928 he was recruited into Soviet espionage activities with the approval of the Communist Party. He was recruited by one Alfred Tilton, who was an illegal agent of Soviet Military Intelligence, posing as a Canadian citizen and in possession of a Canadian passport. One of the early assignments given to Dozenberg was the sounding out of other Americans for later recruitment by Tilton. Dozenberg, after pleading guilty to violations of the passport laws, served a term in prison in 1940 and thereafter prior to his death cooperated with United States Government agencies.

Simon Rosenberg, another naturalized American of Polish background, during 1931 was sent to Russia by his employer. While there, he met representatives of a Soviet intelligence agency and under threats of reprisals to be taken against his sister who was then living in Russia, he agreed to work in behalf of the Russians upon his return to the United States. His principal assignment in this country was to obtain technical and industrial information. Rosenberg, who is now deceased, also cooperated with agencies of the Government, prior to his death, as have many other Americans who have been involved in Soviet intelligence activity.

Another example is the case of Hafis Salich, a naturalized American employed by the Office of Naval Intelligence in California who met Mikhail N. Gorin through a mutual acquaintance in 1937. Gorin was then the Pacific Coast manager of Intourist. By advancing Salich money, Gorin ultimately persuaded him to furnish Office of Naval Intelligence reports for which Gorin paid $1700. Gorin and Salich were found guilty of espionage in 1939 and Salich was sentenced to four years imprisonment, which he served. Gorin appealed his conviction and sentence of six years to the Supreme Court of the United States which unanimously upheld the conviction in 1941; however, the trial judge suspended execution of the sentence and placed him on probation provided he would pay a $10,000 fine and leave the United States, never to return.

The decade of 1950-1960 has been no exception. It began with the trial and conviction of Valentin Gubitchev, a Soviet employee of the United Nations who had obtained information from Judith Coplon, an employee of the Department of Justice. This conviction was soon followed by convictions of several Soviet agents in the Julius and Ethel Rosenberg network in 1951; by the sentencing of Otto Verber and Kurt Ponger in 1953 after they pleaded guilty to espionage; by the guilty pleas of espionage by Jack and Myra Soble and Jacob Albam in 1957 and later in the same year the conviction of Colonel Rudolf Abel, a Soviet illegal agent in this country.

These prosecutions, although they clearly establish the nature of Soviet espionage activities against this country, involve only a part of the Soviet-bloc espionage attack which has included numerous Soviet attempts to penetrate United States Government agencies. For example, the prosecution of Judith Coplon, an employee of the Department of Justice in early 1950 was followed in October, 1950, by a Soviet assignment to Boris Morros, an American motion picture producer who was cooperating with the FBI, to revive his acquaintance with a member of the United States Atomic Energy Commission; to obtain compromising information concerning this individual; and to carefully explore the possibility of placing a secretary in his office who could furnish information to the Russians. Morros previously in 1948 had been given the assignment to attempt to obtain information which could be used by the Russians in an effort to compromise United States General Clay in Germany.

Another example occurred during 1954 when Soviet intelligence officers in Germany approached an American Army officer stationed in Germany who was soon to be retired. They propositioned him to work for the Soviets after his return to the United States and set up a schedule for meetings in New York City. Pursuant to the arrangements, Maksim G. Martynov, counselor of the Soviet Representation to the United Nations Military Staff Committee, carried out a series of clandestine meetings in New York with a person whom he believed to be the

Army officer. As a result of his abuse of his status, Martynov was declared persona non grata on February 21, 1955.

Another example is that of Evgeniy A. Zaostrovtsev, second secretary of the Soviet Embassy who was declared persona non grata on May 13, 1959, for attempting to subvert a State Department employee to obtain information from State Department files.

A more recent example has been previously cited involving the attempt by Vadim Kirilyuk, an employee of the United Nations, to penetrate a vital Government agency by instructing an American to obtain employment in that agency.

Soviet attempts to recruit Americans during this period have not been confined to attempts to infiltrate Government agencies. For example, in February, 1954, Igor A. Amosov, assistant Soviet naval attache, was declared persona non grata for attempting to obtain information concerning radar and United States naval vessels from a businessman who had commercial dealings with the Russians and who was in a position to obtain such data.

In June, 1956, Ivan A. Bubchikov, an assistant Soviet military attache was declared persona non grata for attempting to obtain data regarding radar, guided missiles, jet fuels and atomic submarines from an American businessman who during World War II had extensive contacts with the Russians on both private and United States Government business. The Soviets attempted to exploit his World War II friendliness.

In August, 1956, Viktor I. Petrov, a Soviet translator at the United Nations, was released from his employment for recruiting an employee of an American aviation company to obtain classified data regarding United States aircraft.

4. *THE INTELLIGENCE ROLE OF THE SOVIET-BLOC OFFICIALS*

Only a few of the many examples of abuse of their diplomatic privileges by Soviet-bloc officials in the United States have been mentioned. In the more flagrant cases, the United States Government has asked the offending

officials to leave this country. During the decade, 1950-1960, 19 Soviet officials have been asked to leave. Many more have been engaged in intelligence activities throughout the years.

The Soviet Union has maintained a large staff of officials in this country since its first recognition in 1933. These officials have been assigned to Soviet embassies, consulates, trade delegations, news media, the United Nations, and the Amtorg Trading Corporation. It is from these installations that the primary intelligence activities are directed against the United States. A former Soviet intelligence officer who defected from the Soviets has estimated that from 70% to 80% of the Soviet officials in the United States have some type of intelligence assignment. Other defectors have confirmed that a high per cent of the officials are intelligence agents. As of May 1, 1960, there were 328 Soviet officials stationed in this country. They were accompanied by 455 dependents, many of whom are also potential intelligence agents.

Nor is this the full strength of Soviet-bloc intelligence. As of May 1, 1960, there were 272 satellite officials station in the United States accompanied by 435 dependents. This almost doubles the potential of Soviet intelligence services. The satellite intelligence services have been developed according to the Soviet pattern, their personnel selected or approved by the Soviets and they are trained and guided by Soviet policies and procedures. Recent defectors from satellite intelligence services have advised that the Soviets have access to all data obtained by the satellites and, in fact, maintain an advisor system at headquarters level to make certain that the satellites operate consistent with Soviet interests.

This coordination is not limited to headquarters' levels. Beginning in November, 1958, the Soviet and satellite miltary, naval and air attaches stationed in the United States began a series of monthly meetings under the guidance of the Soviet military attache. During this initial meeting the satellite representatives were given specific target assignments for the collection of information desired by the Soviets and arrangements were made for the over-all correlation of their activities.

5. *INDUSTRIAL SPYING AND CIRCUMVENTION OF REGULATIONS*:

This large group of Soviet-bloc officials stationed in the United States has systematically over the years developed a most important part of the modern intelligence machine which was referred to by one Soviet official as the best industrial spying system in the world. Volumes could be written as to the techniques used and the ways and means developed by the Soviet bloc to obtain information regarding the industrial potential of the United States often with the use of subterfuge and deceit as well as deliberate circumvention of Customs regulations.

The following examples illustrate this activity:

In 1924 the Amtorg Trading Corporation was organized in New York for the purpose of acting as an importer and exporter on the North American continent for official trusts of the Soviet Union. Amtorg continued to operate during World War II, although in 1942 the Soviet Government created the Soviet Government Purchasing Commission in Washington, D.C., to purchase war material. This Purchasing Commission was dissolved after the end of World War II, and its activities absorbed by Amtorg. Since its organization, Amtorg Trading Corporation has been staffed primarily by representatives of the Soviet Government who have official status. Former employees of Amtorg have advised that it was standard practice for Soviets attached to Amtorg to request permission for Soviet officials to vist industrial facilities throughout the country on the promise of orders to be forthcoming if the products were found satisfactory. In many instances the officials of the companies would later be advised by Amtorg that Moscow would have to approve the order. In instances where a contract was given to a particular company, Amtorg consistently demanded blueprints of the particular product and other data to which it was not entitled by normal business practices. Amtorg officials also consistently insisted on a clause in the contract which would give Soviet inspectors the privilege of inspecting all of the merchandise before it was shipped to Russia.

Another device utilized by Amtorg officials was to gain the confidence of some employee in a plant which had a contract with the Russian Government and, through this employee, obtain blueprints which were copied in the Amtorg office and the copies forwarded to Russia. Amtorg officials would also advertise for employees who, when they appeared for an interview at the Amtorg office, would be instructed to bring proof of their ability in the form of blueprints of former projects. When the applicants for employment later showed up with the blueprints, the blueprints would be photographed and the photographs forwarded to Russia.

Amtorg has also followed a practice of preparing detailed catalogues concerning American industry. Congressman Mundt on January 29, 1947, described one of these catalogues as "a manual for bombing America." It was pointed out that the book contained detailed information including many photographs and maps of vital areas of the United States. In this connection Amtorg Trading Corporation during the 1940's prepared a monthly magazine called "American Engineering and Industry" and an annual guide called "Catalogus of American Engineering and Industry." This latter publication in 1946 was described as a three-volume, 5,000-page document.

In August, 1956, Milos Prochazka, a Czechloslovakian official assigned to the Commercial Office at the Czech Embassy, furnished to an American the specifications for the components of 2 steel mills to be purchased in the United States for the Czechs. He outlined a plan whereby the American would act as an exclusive agent to purchase these mills ostensibly for a private concern in a Western country. He would obtain estimates and if the estimates were approved, the Czechs would furnish the name of the purchasing company, a power of attorney and the necessary bank credit. Thereafter, the mills would be shipped to the Czech agent in the Western country and then transhipped to Czechoslovakia.

6. *EXPLOITATION OF PUBLIC INFORMATION*:

It is no secret that one of the results of the freedom of our democratic society is the availability of voluminous

information to members of the public merely for the asking. Some of the cases previously cited clearly indicate that the Soviet-bloc intelligence services are aware of this fact and have taken full advantage of this democratic freedom; however, it remains for former Soviet-bloc intelligence officers to testify as to its real significance and importance to the Soviet-bloc intelligence services. One defector has stated that the ease with which information is obtained in this country has resulted in a reduction of the hazardous and time-consuming clandestine operations which would otherwise be necessary. Another has estimated that the Soviet Military Attache's office in the United States is able to legally obtain 95% of the material useful for its intelligence objectives. He stated that, in fact, 90% of an intelligence agent's time in any other country in the world would normally be consumed clandestinely obtaining information which is readily available in the United States through Government agencies or commercial publishing houses. He pointed out that Polish military intelligence obtains more technical data in the United States than from all the other countries in the world combined.

Although such information is collected in a number of ways, the following techniques in addition to those previously mentioned have been most productive.

One of the most useful techniques is attendance at conventions of American organizations by Soviet-bloc officials. During the year preceding Khrushchev's visit to this country, Soviet officials alone attended approximately 30 conventions covering various fields of endeavor including aeronautics, electronics, plastics development, education and others. Typical were the activities of 2 Soviets who attended the Western Electric convention held in Los Angeles during August, 1959. As usual, at the inception, they began to collect voluminous literature. When the volume became unwieldy one Soviet left the material at a check stand and resumed his collection activities. It was estimated that the literature picked up by these Soviets at this one convention weighed approximately 250 pounds.

Another technique utilized is correspondence with chambers of commerce and industrial facilities throughout the

United States through which voluminous information regarding transportation systems, major industries, etc., is obtained. In many instances useful maps of the areas are also secured.

Still another technique is the subscription to American publications and collection and review of United States Government documents. For example, during June, 1959, it was ascertained that the personnel of the Soviet Military, Naval and Air Attache Offices subscribed to 44 newspapers and 58 magazines of a technical, scientific, military and general news nature. It is apparent that the Soviets have a definite program of subscribing to newspapers published at or in the vicinity of vital United States military bases.

Purchases from the United States Government have long been a productive source for Soviet-bloc intelligence. For example, on December 28, 1944, the Soviet Government Purchasing Commission in Washington, D.C., ordered copies of 5,810 patents. On the same date the New York office of this Commission purchased two copies of 18,000 patents. On January 1, 1945, the Soviet Government Purchasing Commission in Washington again ordered copies of 5,342 different patents. On January 12, 1945, copies of 41,812 patents were ordered, The next order was for 41,810. The acquisition of copies of patents has been continued throughout the years as illustrated by the fact that in early 1959 Anatoli G. Vasilev, an employee of the Office of the Soviet Military Attache, requested an American to instruct him in the use of the "Search Room" of the United States Patent Office so that he could locate patents in which he was interested.

The Soviets have, of course, not restricted themselves to the acquisition of patents. For example, on March 10, 1954, an Assistant Soviet Air Attache purchased "The Pilot's Handbook" for the East and West Coasts of the United States from the United States Coast and Geodetic Survey of the Department of Commerce. On March 12, 1954, a chauffeur of the Soviet Air Attache purchased "The Pilot's Handbook" for Canada and Alaska. Six days later an Assistant Soviet Attache ordered "The Pilot's Handbook" for the Far East and

Europe. These handbooks contained diagrams of all of the principal airfields and the approaches used in landing planes.

In April, 1954, Soviet officials stationed in Washington obtained from the Map Information Office of the U.S. Geological Survey, Department of the Interior, topographic maps covering North Carolina, Michigan, Illinois, Kentucky, and an area within a 50-mile radius of Washington, D.C.

This collection activity has continued unabated up to the present time. Literally thousands of similar documents are obtained in this country every year by Soviet-bloc officials assigned in this country and through registered agents such as the Four Continent Book Corporation and the Tass News Agency.

A statement of a satellite defector illustrates the value to the Soviet-bloc of United States Government publications. He stated that on one occasion, Polish military intelligence obtained an 18-volume edition prepared by the United States Army Engineers regarding United States port facilities. It was purchased from the Government Printing Office at nominal cost, but its estimated value to the Polish military intelligence was placed at $50,000.

Not content with the large volume of publicly available material, Soviet-bloc officials have resorted to deceit. For example, on November 5, 1958, Ion Dubesteanu, an assistant military attache of the Rumanian Legation in Washington, D.C., was declared persona non grata for activity beyond the scope of his official duties. Using a false name and identity, Dubesteanu had corresponded with U.S. military installations soliciting material and had rented post office boxes at North Beach, Maryland, under assumed names to which such material was to be sent.

Reconnaissance trips by Soviet-bloc officials have been a most productive source of intelligence. The officials have been observed to carefully prepare for such trips by reviewing publications collected in this country, doing research at the Library of Congress, et cetera. Exclusive of trips from Washington, D.C., to New York City, officials of the Soviet Military Office alone took 16 trips

to various areas of the country in 1958 and 1959. They visited 26 states in 1958 and 37 in 1959. They covered most of the strategic areas of the country and covered some areas as many as four times. During these trips they followed a definite pattern of visiting chambers of commerce, driving around the perimeter of industrial facilities and wherever possible circled military, naval and air installations in the areas visited. They collected all available literature and maps relating to industrial facilities, transportation systems, power plants, dams, chemical factories, et cetera, and wherever possible took photographs in addition to making extensive notes.

7. *PROPAGANDA AND PERSONAL APPEARANCE*

Exploitation of our freedoms has also taken the form of propaganda. Not content with the distribution of over 20,000 copies of the illustrated monthly magazine, "USSR," which is in reciprocity for distribution of a similar American magazine in the Soviet Union, the Soviet Embassy has a carefully planned program of distributing press releases. As of February, 1960, the Press Department of the Soviet Embassy was distributing press releases to almost 7,000 individuals and institutions in the United States, including newspaper editors, business leaders, radio stations, public libraries, television stations, teachers, labor leaders, scientists, and leaders in trade and commerce.

In addition, since January 1, 1959, 30 different officials attached to the Soviet Embassy have made, or were scheduled to make, 74 public appearances (not including 7 additional invitations for appearances by the Soviet Ambassador) before various groups in this country. Nineteen other Soviets attached to the Soviet Delegation to the United Nations, employed by the United Nations Secretariat or assigned to Intourist, made, or were scheduled to make, 39 public appearances during the same period.

These public appearances normally involved speeches or participation in forums on the part of the Soviet officials and were made before various types of groups, including high school, college, and university groups, parent-teacher

associations, advertisement and civic clubs, fraternities, professional associations or clubs, religious and cultural groups, travel clubs and community centers. Some of these were television appearances. It is apparent that the Soviets are taking every opportunity to spread the gospel of communism by exploitation of the intense desire of Americans to learn more about the Soviet Union.

8. *USE OF THE UNITED NATIONS*

Attention is called to the fact that many of the incidents and cases previously cited involved Soviet employees of the United Nations. They are guests of the United States and are supposedly dedicated to the cause of international peace but they are, in fact, carefully selected envoys of the international communist conspiracy, trained in trickery and deceit and dedicated to the concept of fully exploiting the freedoms of the countries they seek to destroy. It is too much to expect that they would not prostitute the United Nations.

9. *"ILLEGAL" OPERATIONS*

Although Soviet-bloc intelligence services have made extensive use of their officials stationed in foreign countries for espionage purposes throughout the years, they have, in addition, operated a parallel clandestine espionage system known as the "illegal" system. As previously noted, "illegal" Soviet agents were dispatched to the United States as early as the 1920's. Such "illegal" agents have no ostensible connection with the Soviet-bloc official establishments in the United States, but operate clandestinely, usually under false identities, making full use of secret communications channels and other clandestine techniques of operation. Their dual function is to bolster the espionage activities of the Soviet-bloc officials and to be prepared to take over all espionage operations in the event of war or other emergency which would cause a break in diplomatic relations.

It is apparent that during the decade 1950-1960 the Soviets have placed increasing emphasis on "illegal" operations. One former intelligence officer of the Soviet Ministry of State Security has advised that a special

directorate was created in 1947 for the purpose of handling "illegal" agents. Another former intelligence officer, Reino Hayhanen, has stated that he was told, while in Moscow in 1952, that plans were being made to change over Soviet contacts from "legal" to "illegal" operations. Another former officer of the Soviet Ministry of State Security has advised that as early as June, 1952, an order was sent to intelligence agents in all western countries to prepare "illegal" organizations which could function without interruption under any condition.

That this policy was followed with respect to the United States is illustrated by the fact that in August, 1956, a female Soviet agent attempted to enter the United States from Canada at Detroit using an authentic copy of a birth certificate previously issued to an American. Detected by the United States border screening process, she was refused entry. Less than a year later, Rudolf I. Abel, a colonel in the Soviet Committee of State Security, was arrested in New York City where he was posing as an American photographer under the name Emil R. Goldfus. Abel had entered the United States in 1948 using a passport issued to a naturalized American in 1947 to visit relatives behind the Iron Curtain and who never returned to this country. Abel was subsequently convicted of espionage and sentenced to 30 years imprisonment, which sentence he is now serving.

It is interesting to note that in October, 1952, the Soviets sent Reino Hayhanen to the United States to act as Abel's assistant. Hayhanen, prior to leaving Russia, had been given instructions by Mikhail N. Svirin, a Soviet intelligence officer. After his arrival in this country, Svirin, who had become First Secretary of the Soviet Delegation to the United Nations, met with Hayhanen and subsequently, during the period 1952-1953, Hayhanen operated under his supervision. It was not until 1954 that Svirin gave instructions for Hayhanen to contact Abel and to act as Abel's assistant.

The case involving Abel and Hayhanen is a striking example of Soviet use of "illegal" agents against the United States. In dispatching such agents to this country, we can be certain that the Soviet-bloc intelligence services will, as they have with their representatives who are

dispatched to this country as diplomats, take full advantage of the freedoms of this country which are guaranteed by our Constitution.

10. *INTERNATIONAL ASPECTS OF SOVIET ESPIONAGE*

The United States has not been the only target of the Soviet-bloc intelligence organizations. Many other countries of the world have felt the barbs of the Soviet espionage attack. The disclosures of the Royal Commission in Canada which followed the 1945 defection of Igor Gouzenko, a Soviet code clerk, revealed a Soviet espionage apparatus which on a broad scale had recruited and subverted Canadian citizens while seeking to infiltrate the Canadian Government and drain off its secrets. The admissions of Klaus Fuchs in 1950 that he betrayed the free world when, as a member of the British Atomic Energy Team, he passed atomic secrets to the Russians clearly indicate the Soviet designs on information in possession of the British Government. The flight of the British scientist Dr. Bruno Pontecorvo in 1950 and the British diplomats Guy Burgess and Donald MacLean in 1951 behind the Iron Curtain adds additional proof. The report of the Royal Commission of the Commonwealth of Australia in 1955 following the defection of Vladimir and Evdokia Petrov, Soviet espionage agents assigned to the Soviet Embassy in Australia, disclosed an extensive Soviet espionage apparatus directed against Australia. Many similar examples could be cited to illustrate that Soviet espionage is international in character and the expulsion of two Soviet officials from Switzerland during the past month clearly indicates that Soviet espionage is currently international in character.

Practically every one of the cases cited above, although based in other countries, had ramifications in the United States. For example, information furnished to the Russians by Dr. Allan Nunn May, who was uncovered by Gouzenko, had been obtained when May visited a laboratory in Chicago in 1944. Klaus Fuchs worked on atomic energy in the United States from early 1944 through September, 1945, and supplied information to the Russians while in this country. The British diplomats Bur-

gess and MacLean had been stationed in the United States prior to their disappearance behind the Iron Curtain. In spite of the use of third countries by the Soviet Union to commit espionage against the United States, Premier Krushchev has made strong threats of reprisal against his neighboring countries which he assumes have been used as bases for United States aerial reconnaissance of the Soviet Union.

11. *AIMS OF INTERNATIONAL COMMUNISM*

The world-wide espionage networks of the Soviet Union are an essential and integral part of the over-all communist plan to completely dominate the world. However to understand the significance of the intelligence activity, it is necessary to examine the basic aims and principles of communism.

The highly authoritative "History of the Communist Party of the Soviet Union (Bolsheviks)" summarized the teachings of Marx and Engels on the question of force and violence. It stressed that Marx and Engels taught the impossibility of establishing a communist state by peaceful means, emphasizing that this could be achieved only through a proletarian revolution through which a dictatorship could be established and all resistance crushed. V. I. Lenin gave practical application to the teachings of Marx and Engels. Through the application of such principles the Bolsheviks seized power in Russia in 1917 and under Lenin's guidance, established a dictatorship through which all resistance was systematically crushed. The success of the movement led Lenin to reiterate in later years that "The substitution of the proletarian state for the bourgeois state is impossible without a violent revolution."

Joseph Stalin followed the Marxist-Leninist principles. The Communist Party in the United States, since it was organized in September, 1919, and throughout the years of Stalin's rule in Russia, was unalterably bound to Moscow. In the earlier years, Party leaders openly, boastfully and defiantly proclaimed their allegiance to and support of Soviet objectives. The nature of the Communist Party, USA, was exposed in 1949 and its leaders convicted in a court of law where the evidence laid out before the jury constituted irrefutable proof that the

Communist Party, USA, advocated the overthrow and destruction of the Government of the United States by force and violence. The policies and activities of the Communist Party, USA, have not changed to date. The current leaders of the Communist Party, like their predecessors, unwaveringly follow the lead of the Communist Party of the Soviet Union.

Time and again, Soviet Premier Khrushchev has claimed that the Soviet Union does not and will not interfere in the affairs of other nations. Yet, in practically every country in the world to date the Soviet Union has established fifth columns in the form of Communist Parties which are under the complete domination and control of the Soviets and are sworn to uphold and aid the Soviet dream for world conquest. Through the directives it furnishes to these subversive forces, the Soviet Union clearly interferes with the political, social, and economic affairs of other nations on a continuing basis in the relentless drive toward world domination.

Today, the rallying cry of world communism is "peaceful coexistence." However, on May 5, 1960, Premier Khrushchev, addressing the Supreme Soviet in Moscow, paid tribute to V. I. Lenin and stated "The Soviet people are proud to know that the cause of our great leader and teacher lives and triumphs and that Lenin's dreams are being translated into reality by hundreds and millions of people—builders of socialism and communism—and that Lenin's cause is winning all upright men on earth." Referring to the triumph of the ideas of Marx, Engels, and Lenin, Krushchev went on to reaffirm "Marxist-Leninist ideas" as the guide to the ultimate triumph of world communism.

Thus, the fact remains that the basic principles of Marxist-Leninist philosophy, demanding the use of force and violence, represent the guides for communism to achieve world conquest. The extensive espionage activities directed against the United States which, in the past, have utilized communists and communist sympathizers in this country as well as other individuals who could be subverted, can be better understood when regarded as essential tools in the relentless and fanatical drive of international communism to conquer the world.

APPENDICES

I. *CASES INVOLVING COURT ACTIONS DURING THE PAST DECADE*

There are set forth hereinafter cases which have been presented to Federal Courts in the United States during the past ten years and which unquestionably reveal Soviet efforts to steal American secrets affecting the national security of this country. All these cases have withstood the exacting test of being tried under the democratic system of the American courts and the convictions obtained are ample proof of the charges made.

* * * *

F. *Jack Soble Case*

In the early 1940's the FBI was conducting an intensive investigation into the activities of Vassili Zubilin (true name, Vassili Mikhailovich Zarubin), Third Secretary of the Soviet Embassy, Washington, D.C. Zubilin had entered the United States on December 25, 1941, with his wife, Elizabeth, and son, Peter. The investigation disclosed that Zubilin had been an important Soviet intelligence agent for many years. During 1934-1937 he was in the United States on several occasions utilizing an American passport fraudulently obtained under the name of Edward Joseph Herbert.

The first break in the FBI investigation came when in the Spring of 1943, Zubilin, while under physical surveillance by the FBI, was observed to contact Boris Michael Morros, a motion-picture producer in Hollywood. After extensive investigation into the activities of Morros, he was interviewed by the FBI in July, 1947, and admitted he was recruited by Zubilin for Soviet intelligence activities. Morros, thereafter, agreed to operate as a double agent against the Soviets under the direction of the FBI. Thus began an operation of intrigue which led to the expose of a Soviet espionage ring in New York City culminated by the arrest on January 25, 1957, by FBI agents of Jack Soble, Myra Soble and Jacob Albam on charges of conspiring to commit espionage. In addition,

the FBI investigation resulted in identifying as Soviet intelligence agents, Jane and George Zlatovski, who were indicted on July 8, 1957, charged with espionage conspiracy; Alfred and Martha Stern, who were indicted on September 9, 1957, on two counts charging espionage conspiracy; Ilya Wolston, who was charged with contempt for failing to appear before a grand jury and on August 7, 1958, pleaded guilty in the Southern District of New York; Mark Zborowski, who was indicted for perjury on April 18, 1958, as a result of his denial before the Federal Grand Jury that he knew Jack Soble; and Vassili Molev, an official attached to the Soviet Embassy, Washington, D.C., who was declared persona non grata, January 25, 1957.

1. *Jack and Myra Soble*

Jack Soble entered the United States in 1941 as a Lithuanian refugee and in 1947 became a United States citizen by naturalization. As early as 1944 Soble participated with other Soviet agents in the operation of a business concern organized to serve as a "cover" for Soviet agents. This was the Boris Morros Music Company with offices in New York and Los Angeles. In December, 1943, Vassili Zubilin introduced Morros to Alfred K. Stern and his wife, Martha Dodd Stern, at which time it was agreed Stern would invest $130,000 in Morros' business, becoming an officer, and learn the business. This arrangement was consummated in early 1944. Shortly after the agreement was made between the Sterns and Morros, Zubilin advised Morros that he was leaving the United States and introduced Morros to Jack Soble, a resident of New York City. Zubilin instructed that Soble was thereafter to act as Morros' and Stern's superior.

Soble supervised activities of Soviet agents both in the United States and Europe; assigned them to recruit U.S. Government employees stationed abroad, to obtain information concerning military equipment and supplies; and has claimed to have obtained information concerning the number of atomic bombs stockpiled in the United States and the rate of atomic bomb pro-

duction as well as photographs of atomic "bunkers" in which bombs were stored.

His wife, Myra Soble, also a Lithuanian refugee, assisted him in his espionage operations.

Jack and Myra Soble were arrested by FBI Agents on January 25, 1957, and were indicted on February 4, 1957, on five counts charging espionage, conspiracy and violation of the Registration Acts. On April 10, 1957, they pleaded guilty to count two of the indictment which charged violation of Section 793, Title 18, U.S. Code (commonly referred to as the peace-time espionage statute) which carries a maximum sentence of ten years. On August 9, 1957, Myra Soble was sentenced to five and one-half years in Federal prison and the other counts of the indictment were dismissed as to her. On October 8, 1957, Jack Soble was sentenced to seven years imprisonment. At that time Myra Soble's sentence was reduced to four years. The other counts of the indictment were dismissed.

2. *Jacob Albam*

Jacob Albam, associated with the Sobles in the espionage conspiracy, is also a native of Lithuania. His application for U.S. citizenship in 1951 has not been granted. Jacob Albam first came to the United States in 1947 on a visitor's visa from France. Soble had an assignment from the Soviets to obtain an American woman for Albam to marry and to set Albam up in business in the United States. Albam was married to an American woman in the Spring of 1948 and returned to France, later re-entering the United States as an immigrant husband of an American citizen and subsequently applying for American citizenship. He purchased an interest in a business in New York which later went bankrupt and subsequently he was employed by his brother who operates a business in New York City.

Albam has been described as a specialist in handwriting, "copying" and photography. When contacted in 1955 by Boris Morros, Albam acknowledged the

code name assigned by his Soviet supervisors, admitted receipt of money to establish himself in this country and agreed to take further Soviet instructions.

Albam was also arrested on January 25, 1957, and indicted on the same charges and on the same date as the Sobles. He pleaded guilty to count two of the indictment on February 26, 1957. On August 9, 1957, he was sentenced to five and one-half years. The other counts of the indictment against Albam were dismissed. On October 8, 1957, Albam's sentence was reduced to five years.

3. *Jane and George Zlatovski*

Jane and George Zlatovski, American citizens currently residing in France, served under Jack Soble's supervision from 1945 to 1951. In a report intercepted by Boris Morros, Jane Zlatovski claimed that while employed by the U.S. Army in Austria in 1947-1948, she obtained through her Army employment names, photographs and biographies of agents of the Counter Intelligence Corps and the Central Intelligence Agency, similar information concerning their "native agents" and "practically every scheme they hatched." Only disruption of contact with her superiors prevented successful delivery of such information to the Soviet Intelligence Service.

Jane and George Zlatovski were indicted on July 8, 1957. The indictment contained two counts charging both with espionage conspiracy similar to the Soble indictment. The Zlatovskis were not arrested inasmuch as they reside in France and efforts to effect their return from France to date have been unsuccessful.

4. *Alfred and Martha Stern*

The Sterns are both American-born citizens. They were originally identified as Soviet agents by Boris Morros in July, 1947, when he reported that they had participated with him and Vassili Zubilin in the establishment of a business concern (the Boris Morros

Music Company) which was to be used as a "cover" for Soviet intelligence agents. It was agreed that Stern would invest $130,000 in Morros' business, become an official and learn the business. Since Jack Soble pleaded guilty, he has confirmed that the Sterns were Soviet agents.

When the Sobles and Albam were arrested on January 25, 1957, the Sterns were residing in Mexico City. They were subsequently served with subpoenas calling for their appearance in New York City before the grand jury hearing the Soble case. They refused to honor the subpoenas and on May 1, 1957, they were fined $25,000 each for contempt. On the following date warrants were issued for their arrest as material witnesses. They were indicted on September 9, 1957, on two counts charging espionage conspiracy and one count charging general conspiracy. The Sterns were not arrested inasmuch as they fled from Mexico to Czechoslovakia clandestinely in July, 1957.

5. *Ilya Wolston*

Wolston was born in Russia. He entered the United States on April 30, 1939. He was naturalized a United States citizen on May 18, 1943. In 1942-1946 he served in the U.S. Army, in 1943 attending the U.S. Army Intelligence School at Camp Ritchie.

On several occasions beginning May 7, 1950, Jack Soble furnished Boris Morros with information concerning an individual he described as a U.S. Army Colonel in Germany who furnished him information under the code name "Slava," which was very valuable to the Soviets. It is noted that from October 1949, until July, 1951, Wolston was employed by the U.S. High Commissioner of Germany in Berlin. In January, 1955, Soble identified his nephew, Ilya Wolston as "Slava." In addition, Jack Soble, pleading guilty in April, 1957, furnished information identifying Wolston as a Soviet agent who provided him information for the Soviets on several occasions beginning when Wolston was in a military camp, about 1943. Soble said Wolston gave him information concerning his

assignments and names of four persons at the camp whom he believed could be approached by the Soviets.

Information concerning the probable identification of Wolston as a Soviet agent was furnished to the Department of State in 1951, together with data developed concerning his black market activities in Germany. The Department of State, on the basis of these data, dismissed Wolston from his employment in Berlin.

On August 13, 1958, Wolston was sentenced to one year's imprisonment for contempt for failure to appear before a Federal Grand Jury in July, 1958. The sentence was suspended and he was placed on three years' probation conditioned on his being available to process of the court within the three-year period.

6. *Mark Zborowski*

Zborowski was born in Russia and became a naturalized U.S. citizen in New York City in June, 1947. Zborowski was employed as a language consultant in 1943-1944 by the War Department in New York City. Jack Soble advised that Zborowski acted as a Soviet agent under his supervision during the approximate period 1943-1945, furnishing information concerning Trotskyites and other anti-Stalin elements. Zborowski denied knowing Soble before a Grand Jury in February and March, 1957, and in an interview August 11, 1957. However, when confronted by Soble on August 7, 1957, he admitted Soble had been one of his espionage superiors.

Zborowski was indicted for perjury April 18, 1958, was found guilty after trial on November 20, 1958, and on December 8, 1958, was sentenced to five years' imprisonment. On November 10, 1959, the Court of Appeals reversed the conviction and remanded the case for a new trial.

7. *Vassili Molev*

Vassili Molev, while attached to the Soviet Delegation to the United Nations, New York City, in 1953 (handling maintenance, purchase of supplies and simi-

lar matters) met Boris Morros on a date and at a time and place previously designated by Morros' Soviet intelligence superiors in Austria. Molev accepted from Morros a report prepared in New York by Jack Soble and given by Soble to Morros in accordance with instructions from their Soviet superiors. Photographs, both still shots and motion pictures, of this meeting were taken by FBI personnel.

Immediately following the arrest of Jack Soble on espionage charges on January 25, 1957, the U.S. Department of State declared Molev persona non grata. Molev at that time was employed (in a similar capacity) by the Soviet Embassy, Washington, D.C. He left the United States on January 28, 1957, en route to Russia.

8. *Mikhail Nikolaevich Svirin*

Mikhail Svirin, a Soviet assigned to the Soviet United Nations Delegation, New York City, from August, 1952, to April, 1954, was identified by Yuri A. Rastvorov, a former Soviet intelligence officer, as a member of the Ministry of Internal Affairs and a very experienced intelligence officer.

On two occasions in January and February, 1953, Svirin was observed in the area where Boris Morros was scheduled to meet with his Soviet superior. Morros subsequently met Vassili Molev on March 3, 1953, at the scheduled meeting place.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Cr. 156-24

In the Matter of

ILYA WOLSTON,

A Witness Before the January 1957
Special Grand Jury

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:
SOUTHERN DISTRICT OF NEW YORK)

AFFIDAVIT

HERBERT C. KANTOR, being duly sworn, deposes and says:

1. I am an Assistant United States Attorney for the Southern District of New York, familiar with the facts in the above-named case, and I make this affidavit on information and belief in support of the Government's motion to hold Ilya Wolston in contempt and in reply to Wolston's affidavits and papers served upon the United States Attorney on Friday, July 25, 1958.

2. On Monday, July 28, 1958, the above motion was argued before the Honorable John M. Cashin. Leave was granted the Government to file these papers in reply to the affidavits and papers served by Ilya Wolston on the United States Attorney on July 25, 1958. Following the argument of this motion, the January 1957 Special Grand Jury, having served the full period allowed by statute, was discharged by the Court.

3. This motion was brought on by an order signed by Honorable Edward J. Dimock on July 14, 1958, returnable July 28, 1958, which directed Ilya Wolston to show

cause why he should not be held in contempt for his failure to comply with the subpoena issued by the District Court directing his appearance before the Grand Jury for the Southern District of New York on July 1, 1958. The defendant has conceded that both the subpoena and the order to show cause have been properly served upon him, and that he did not in fact appear before the Grand Jury on July 1, 1958.

4. The inquiry conducted by the January 1957 Grand Jury underwent three distinct phases. Following its empaneling in January, it heard testimony relating to the activities of Jack Soble, which resulted in the indictment of Soble and others on February 4, 1957. The Grand Jury continued to hear testimony during the first months of its session relating to the activities of various Soviet agents who conducted espionage against the United States in close contact with Jack Soble. On April 10, 1957, Jack Soble, Myra Soble, and Jacob Albam, pleaded guilty to committing espionage against the United States and thereafter cooperated with the Government by testifying before the Grand Jury. The hearing of the testimony of the defendants by the Grand Jury constituted the second phase of the investigation conducted by this Grand Jury. Following the completion of this phase of the inquiry, the testimony that had been given to the Grand Jury since its inception was evaluated, and the Grand Jury determined that it desired to re-investigate certain matters and to go into new matters. During the year 1958 this third phase of the Grand Jury inquiry was undertaken.

5. Ilya Wolston first appeared before the Grand Jury during the early months of its session and prior to Jack Soble's pleading guilty to committing espionage against the United States on April 10, 1957. On May 16, 1957, the United States Attorney received a letter from Wolston containing a certificate of Dr. Isidore Rodis, which stated that Wolston was suffering from "dizzy spells, insomnia and loss of appetite," and he could not therefore travel to New York. On June 24, 1957, a subpoena was issued for Wolston's appearance before the Grand Jury on June 28, 1957. The day before Wolston was scheduled to appear before the Jury, on June 27, 1957, Mrs. Wolston

telephoned Thomas B. Gilchrist, Jr., Chief Assistant United States Attorney, to state that Wolston was unable to appear before the Grand Jury. Gilchrist stated that if Wolston did not see fit to appear in the near future, the Government might take action to force his compliance. Wolston did not appear before the Grand Jury on June 28, 1957. On July 8, 1957, the United States Attorney received a letter from Mrs. Wolston containing a certificate of Dr. Robert H. Groh, which stated that Wolston was "too ill with an emotional disorder to * * * be questioned * * * at this time." On May 9, 1958, a subpoena was issued for Wolston's appearance before the Grand Jury on May 19, 1958. This was the first subpoena addressed to Wolston in over ten months, and it occurred during the third phase of the Grand Jury inquiry referred to above. On May 16, 1958, Mrs. Wolston telephoned me and informed me that Wolston could not travel without her, and that she could not get off from work for one week. As a courtesy to Wolston, without consulting the Foreman of the Grand Jury, I adjourned the subpoena for one week to May 23, 1958. On May 21, 1958, the United States Attorney's office received a letter from Mrs. Wolston containing the certificate of Dr. Edward F. Kerman. This certificate stated "Mr. Wolston is too ill to be subjected to questioning." On May 23, 1958, the Grand Jury convened, but Wolston did not appear. In view of the fact that the original subpoena had been adjourned for the convenience of Wolston and without the direction of the Foreman of the Grand Jury, this failure of Wolston to appear before the Grand Jury on the adjourned date could not be enforced by contempt proceedings. Having taken advantage of the Government's courtesy, Wolston violated his obligation with impunity. On the same day that he failed to appear, a new subpoena was issued for Wolston's appearance on May 27, 1958. One day before Wolston was scheduled to appear, on May 26, 1958, Mrs. Wolston told Arthur H. Christy, then Chief Assistant United States Attorney, that Wolston was mentally disturbed and panicked at the thought of testifying before the Grand Jury, but that he had obtained a job four or five

weeks ago and might soon be available. Christy stated that should Wolston fail to comply with the subpoena, the Government would be required to take serious steps. Mrs. Wolston left the United States Attorney's office stating that Wolston would probably appear before the Grand Jury on May 27, 1958.

6. On May 27, 1958, Mr. and Mrs. Wolston appeared at the United States Court House, Foley Square, and requested to see me. At the same time my presence was required in the United States District Court for the Southern District of New York, in Room 318 of the United States Court House, where the case of *United States* v. *Charles Korba* [C 154-348] was on the trial calendar of the Court. At approximately 10:30 in the morning I was assigned to commerce trial in the *Korba* case before the Honorable Irving R. Kaufman. I immediately returned to my room and advised Wolston that I had been assigned to trial, and that his appearance before the Grand Jury would therefore have to be cancelled since I was the only one sufficiently versed in the matters being presented to the Grand Jury to be able to interrogate him. I asked Wolston as long as he was present in New York whether he was willing to speak to F.B.I. agents. Wolston said that he was, and the agents and Wolston arranged for Wolston to be interrogated in Washington, D.C. I advised Wolston that he would have to come back to New York at a subsequent time in order to testify before the Grand Jury. To my observation he was responsive to my questions, his conduct was appropriate to the occasion, and he appeared physically fit despite his trip to New York from Washington.

7. On June 9, 1958, a subpoena was issued for Wolston's appearance before the Grand Jury on June 17, 1958. On June 17, 1958, the Grand Jury convened but Wolston did not appear. Subsequent investigation determined that Wolston could not be located at his residence or alleged place of employment, and that the subpoena was not therefore served upon him. On June 18, 1958, the United States Attorney received a letter from Mrs. Wolston containing the certificate of Dr. Edward Kerman, which stated that it was his recommendation that the United States Attorney should "call off further questioning of

[his] patient for a period of six months to a year." The certificate further stated "that continued demands on my patient of the nature that now exists will terminate in a suicidal attempt on his part."

8. On June 23, 1958, a subpoena for Wolston's appearance before the Grand Jury on July 1, 1958, was issued. After several attempts the service of a copy of this subpoena was effected upon Ilya Wolston at his residence on June 28, 1958. The day Wolston was to appear before the Grand Jury, on June 30, 1958, Sidney Dickstein, Esq. telephoned me stating that he was calling on behalf of counsel for Wolston who was not available, and that he requested an adjournment of Wolston's appearance before the Grand Jury. In view of my past experience in this matter, I declined to grant such adjournment and further stated that Wolston would have to appear before the Grand Jury, and if there were any reasons for his not testifying he should make them known to the Grand Jury and to a court, if necessary. I further stated that should Wolston fail to appear, the Government would take appropriate measures to punish his refusal to comply with the subpoena. On July 1, 1958, the Grand Jury convened, but Wolston failed to appear. Wolston has submitted numerous certificates as to his mental condition, but it does not appear that he could not have been physically present on the date that the subpoena commanded his appearance. Should there be such facts as would excuse Wolston from testifying, these facts, if they exist, could have been then presented to the Grand Jury and to the Court. There is no excuse for his repeated failures to appear.

9. Wolston's actions demonstrate deliberate disregard for the process of this Court. He has appeared or failed to appear before the Grand Jury according to his own whim. His refusal to appear before the Grand Jury to give testimony on July 1, 1958, constitutes a completed criminal contempt. In this case it has resulted in Wolston's avoiding testifying before this Grand Jury. In a last minute effort to avoid the possible punishment for his contemptuous behavior, Wolston sought to appear before the Grand Jury on the final day of its statutory

period. Such an appearance, however, would have been meaningless. The interrogation of Wolston in a matter as complicated and as serious as espionage could not for all practical purposes be conducted on such short notice. What is more, should this Grand Jury have desired to take any action as a result of Wolston's testimony, or should they have desired to call witnesses to further inquire into the subject of Wolston's testimony, they would have had no time to do so. The proposed eleventh hour appearance cannot be reconciled with the numerous occasions in which Wolston caused the Grand Jury to convene and stand idle. The power of the Grand Jury to conduct an orderly inquiry is at stake in this case. The Grand Jury should not be required to rely upon the whimsy of a proposed witness, nor should a witness be allowed to disobey the orders of a court and avoid punishment therefor by a last minute offer to appear.

WHEREFORE, the Government requests that Ilya Wolston be held in contempt and be punished for such contempt as to the Court may seem just and proper in view of all the circumstances.

/s/ Herbert C. Kantor
HERBERT C. KANTOR
Assistant United States Attorney

Sworn to before me this 29th day of July, 1958.

/s/ Leo Cohen
LEO COHEN
Notary Public
State of New York

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 75-459

ILYA WOLSTON, PLAINTIFF

v.

READER'S DIGEST ASSOCIATION, INC., doing business as READER'S DIGEST PRESS, ET AL., DEFENDANTS

AFFIDAVIT

DISTRICT OF COLUMBIA) SS

ILYA WOLSTON, being duly sworn, deposes and says:

1. My name is Ilya Wolston. I am the plaintiff in this case and submit this affidavit to supplement the facts stated in my deposition of December 10, 1975.

2. In January 1957, the FBI arrested Jack Soble and his wife, my uncle and aunt on espionage charges. On the day of their arrest, my wife and I were "invited" to FBI headquarters and interrogated for several days. Thereafter I was subjected to successive interrogations in New York and Washington, my appearances in New York compelled by grand jury subpoenas.

3. My mental illness which had its inception during the illness and death of my daughter (see deposition pp. 40-42), worsened and I was under continuing treatment, which involved some thirteen electro-shock treatments in 1957 alone. Representations concerning my condition were made to Office of the United States Attorney for the Southern District and medical certificates were submitted in an effort to persuade the FBI and the Assistant United States Attorney who was conducting the investigation not to require me to continue to travel to New York for lengthy interrogations, and to accept instead my offer to see them in Washington for more frequent but shorter sessions. This proved to no avail.

4. I was served with another New York Grand Jury subpoena for May 27, 1958. I came to New York with

my wife on May 27th to be told that the Grand Jury would not be sitting. Instead I was ushered into a room and subjected to further interrogation.

5. On Saturday, June 28, 1958 I was served with another subpoena requiring my attendance in New York on July 1st. I did not appear. An order to show cause why I should not be held in contempt was issued returnable July 28th. I appeared in Court on July 28th intending to indicate my willingness to testify, but learned for the first time that the Grand Jury was to be discharged that very day. I made an offer in open court to testify before the Grand Jury before its discharge, but the offer was rejected by the Assistant United States Attorney, who first asserted that the Grand Jury's term had expired the day before, a Sunday, and then stated that he was not prepared to conduct the examination.

6. The Grand Jury was discharged and a criminal contempt hearing was commenced. My wife, who was then pregnant, was called to testify as to my mental condition on the return date of the subpoena, but she broke down hysterically during the course of her testimony. Rather than subject her and me to the continued trauma of a trial, and upon assurance that no jail term would be imposed, I pleaded guilty to contempt. A one year sentence was suspended conditioned on my subsequent cooperation with federal authorities and I was placed on three years probation.

7. I have been damaged in my reputation, and have been subject to embarrassment and humiliation as a result of the false statements which appear in *KGB* identifying me as a Soviet Agent, linking me with convicted spies and stating that I have been indicted for espionage.

8. I have been unable to find employment since the publication of *KGB*, although I have tried to do so.

/s/ Ilya Wolston
ILYA WOLSTON

Sworn to this 15th day of June, 1976.

/s/ [Illegible]
Notary Public

My Commission Expires March 31, 1978

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 75-459

ILYA WOLSTON, PLAINTIFF

v.

READER'S DIGEST ASSOCIATION, INC., doing business as READER'S DIGEST PRESS, ET AL., DEFENDANTS

OPINION AND ORDER—Filed Jan. 31, 1977

In this diversity action the plaintiff, Ilya Wolston, seeks to recover compensatory and punitive damages for allegedly libelous statements about him that appear in the book *KGB, The Secret Work of Soviet Agents* (*"KGB"*), authored by defendant John Barron, published by defendant Reader's Digest, offered as a selection by defendants Book-of-the-Month Club and Macmillan Book Clubs, and reprinted in paperback by defendant Bantam Books. The defendants claim that no genuine issue of material fact exists and that they are entitled to judgment as a matter of law, and have moved for summary judgment. Rule 56, Fed. R. Civ. P.; Local Rule 1-9(h). Wolston, Barron, and representatives of each of the other parties have submitted affidavits, plaintiff and defendant Barron have been deposed, and the court has heard oral argument by counsel for both sides.

The first question the court must consider is what degree of fault would plaintiff be required to demonstrate if this matter were to go to trial. Defendants claim a constitutional privilege with respect to statements they published concerning Wolston. They contend that he qualifies as a "public figure" for purposes of libel law, and they urge the court to adopt the "actual-malice" standard. *See, e.g., Curtis Publishing Co.* v. *Butts*, 388 U.S. 130 (1967). Alternatively, defendants contend that Wolston became involved in a matter of "public concern" and that, in such a case, the law in the District of Columbia requires application of the actual-malice standard even if the plaintiff does not qualify as a public figure. *Hatter* v. *Evening Star Newspaper Co.*, Civil

No. 8298-75 (Sup. Ct. D.C. March 15, 1976). Wolston sees matters differently. He contends that he is a "private-individual" plaintiff for purposes of a libel suit and observes that, if that is so, the court can impose liability on defendants under any standard short of liability without fault. *See generally Gertz* v. *Robert Welch, Inc.*, 418 U.S. 323 (1974); *Time Inc.* v. *Firestone*, 424 U.S. 448 (1976). He suggests that the court adopt either a negligence or gross negligence standard for libel concerning private individuals. He argues that the court is not bound by the decision of the Superior Court of the District of Columbia in *Hatter* v. *Evening Star*, *supra*, and that, in any event, the court should distinguish that decision.

The second question the court must consider is whether, under the appropriate standard, the pleadings, affidavits, and depositions demonstrate the existence of issues that are inappropriate for summary resolution. In this connection plaintiff disputes defendants' contention that no genuine issues of fact exist. He argues that defendants have failed to establish as a matter of law the nonexistence of fault on each of their parts and that this is so regardless of which standard of fault applies. Therefore, he claims, the court should deny defendants' motion and permit plaintiff to proceed to trial.

I. FACTUAL BACKGROUND

In January 1957 Ilya Wolston, a naturalized American citizen residing in the District of Columbia,[1] received a subpoena directing him to appear before a special federal

[1] Wolston was born in Russia in 1918. He subsequently lived in Lithuania, Germany, France, and England before coming to the United States in 1939. The army drafted him in 1942, and during his tour of duty he became a naturalized citizen; he was trained as an interpreter and served primarily in Alaska. After receiving an honorable discharge in 1946 he worked as an interpreter for the United States Military Government and the State Department in Allied-occupied Berlin. He returned to the United States in 1951 and worked as a clerk until 1953, when he enrolled in an undergraduate program at New York University. In 1955 he and his wife moved to Washington, D.C., where he worked several months for the Army Map Service and then as a free-lance translator until January 1957. Deposition of Ilya Wolston at 5-42.

grand jury in New York City. The grand jury had been investigating the activities of Soviet intelligence agents in the United States; it summoned Wolston shortly after the Federal Bureau of Investigation arrested his aunt and uncle, Myra and Jack Soble, for espionage.[2]

Wolston traveled to New York on several occasions, but failed to respond to a subpoena requiring him to appear on July 1, 1958. He was charged with criminal contempt, he pleaded guilty, and he was sentenced to one year in prison. The sentence was suspended and Wolston was placed on probation for three years. His failure to appear before the grand jury and his subsequent plea of guilty were mentioned or discussed at the time in some fifteen newspaper stories in New York and Washington, D.C. Deposition of Ilya Wolston at 62-72.

In 1959 Viking Press, Inc. published the book *My Ten Years As A Counterspy*, by Boris Morros. A one-time confederate of Jack Soble who later served as an intelligence agent for the F.B.I., Morros in this book, identified plaintiff as a Soviet agent in the United States. According to Morros, Soble claimed that an individual who had operated in Germany under the code name "Slava" had supplied him with information valuable to the Soviets.[3] Subsequently, Morros says in his book, Soble identified Ilya Wolston as "Slava."[4] Morros also states, however, that he knew Soble to be a "confirmed liar" and acknowledges that Soble was his only source of information concerning Wolston.[5]

In a report entitled "Expose [sic] of Soviet Espionage May 1960" the F.B.I.[6] reiterated the information that

[2] The Sobles pleaded guilty in April 1957 to one count of an indictment charging them with violation of 18 U.S.C. § 793, the so-called "peace-time espionage statute."

[3] Morros, *My Ten Years As A Counterspy*, 176, 183, 187-91, 193, 195-96, 204, 210, 222, 225, 229, 238, 247 (1959).

[4] *Id.* at 247.

[5] *Id.*

[6] The F.B.I. prepared the report; it was published by the Senate Subcommittee to Investigate the Administration of the Internal Security Act, Committee on the Judiciary, 86th Cong., 2nd Sess. (1960).

Soble had furnished to Morros and noted that Soble had also described Wolston's intelligence activities to the government. *Id.* at 26. The report states:

> "On several occasions beginning May 7, 1950, Jack Soble furnished Boris Morros with information concerning an individual he described as a U.S. Army Colonel in Germany who furnished him information under the code name 'Slava,' which was very valuable to the Soviets. It is noted that from October, 1949, until July, 1951, Wolston was employed by the U.S. High Commissioner of Germany in Berlin. In January, 1955, Soble identified his nephew,[7] Ilya Wolston, as 'Slava.' In addition, Jack Soble, pleading guilty in April, 1957, furnished information identifying Wolston as a Soviet agent who provided him information for the Soviets on several occasions beginning when Wolston was in a military camp, about 1943. Soble said Wolston gave him information concerning his assignments and names of four persons at the camp whom he believed could be approached by the Soviets.
>
> "Information concerning the probable identification of Wolston as a Soviet agent was furnished to the Department of State in 1951, together with data developed concerning his black market activities in Germany. The Department of State, on the basis of these data, dismissed Wolston from his employment in Berlin.[8]

Id. at 25-27. The report does not indicate that its authors relied exclusively on Soble in identifying Wolston as an agent. On another page it simply lists Wolston's name among people "the F.B.I. investigation resulted in identifying as Soviet intelligent agents." *Id.* at 24.

The present action arises from the publication in 1974 of *KGB*, which summarizes Soviet espionage efforts since

[7] *See* Note 1, *supra*.

[8] In his deposition Wolston claims that a reduction in force accounted for the loss of his State Department job and that the reference to "black market activities" is false. Deposition of Ilya Wolston at 27-28, 89-90.

World War II. Wolston objects to the following sentence and footnote, which appear on page 188 of the Reader's Digest Press edition:

> "Among Soviet agents identified in the United States were Elizabeth T. Bentley, Edward Joseph Fitzgerald, William Ludwig Ullman, William Walter Remington, Franklin Victor Reno, Judith Coplan, Harry Gold, David Greenglass, Julius and Ethel Rosenberg, Morton Sobell, William Perl, Alfred Dean Slack, Jack Soble, Ilya Wolston, Alfred and Martha Stern.*
>
> * No claim is made that this list is complete. It consists of Soviet agents who were convicted of espionage or falsifying information or perjury and/or contempt charges following espionage indictmnets, or who fled to the Soviet bloc to avoid prosecution . . ." [9]

Plaintiff states that he did not serve as a Soviet agent and that he was never indicted for espionage; [10] he complains that assertions in *KGB* to the contrary have damaged his reputation, embarrassed, and humiliated him.[11] He contends that Barron knew that Soble was, as Morros

[9] Plaintiff reads this footnote as falsely stating that he was indicted for espionage. Defendant Barron in his deposition claims that he meant to say no such thing. Rather, he states, "I believe and know that he [Wolston] fell in the category of someone who was convicted of contempt of court following espionage indictments, whch raised matters about which he refused to testify." Deposition of John Barron at 57. Thus, according to Barron, the phrase "following espionage indictments" merely provides the context in which plaintiff's contempt conviction occurred.

[10] *See* Note 9 *supra*. For purposes of this motion the court assumes plaintiff's contentions in this regard are true. At a trial on the merits, however, proof that the assertions in *KGB* are true would constitute a defense and bar plaintiff from recovering damages for libel.

[11] Although his complaint makes no mention of lost income, in Wolston's deposition he attributed loss of "potential income" to *KGB* on the ground that, "If I were not called a Soviet agent, I would most likely be well employed." Wolston Dep. at 105. Wolston acknowledges, however, that he was unemployed for the six years preceding publication of *KGB* with the exception of occasional services for which he received "very negligible" compensation. *Id.* at 53-54.

put it, a "confirmed liar;" that Barron therefore had reason to doubt the F.B.I.'s report; that Barron failed adequately to investigate the charges he levelled against plaintiff and instead, together with the co-defendants, published *KGB* in reckless disregard of the truth of those charges.

Defendants contend that Wolston has brought this lawsuit 15 years too late, that is, that any damage he suffered as a result of identification of him as a Soviet agent is attributable to Morros's book and the F.B.I.'s report. In his affidavit defendant Barron states that for purposes of documenting information about Wolston he relied on the F.B.I.'s report,[12] that he had reason to believe the report was accurate,[13] and that he was "[a]t no time . . . aware of any fact that would give . . .[him] reason to doubt the truth of . . . [that report] or of any other statement in it." [14] Thus, although he admits he was aware of Morro's views regarding Soble's credibility,[15] Barron claims that Soble's reputation for truthfulness caused him no concern because Soble had earned it while acting as a spy; [16] by contrast, according to

[12] Affidavit of John Barron at 2. The report is cited in *KGB* as a source for chapter nine of the book, the chapter that contains references to the plaintiff. *KGB, The Secret Work of Soviet Agents* 430 (Reader's Digest Ed.) (1974).

[13] In his deposition Barron indicates that he worked as a newspaper reporter for a number of years and that in that connection the F.B.I. provided him with consistently reliable information; that the F.B.I.'s report is consistent with other sources, i.e. Boris Morros's book; and that "this was a considered formal statement by the F.B.I. bearing the imprimatur and passive endorsement of a constituted committee of the Senate, responsible for internal security matters; and our experience has been that statements of the F.B.I. issued under such circumstances are reliable and legally defensible." Deposition of John Barron at 66-67.

[14] Affidavit of John Barron at 3.

[15] Deposition of John Barron at 73.

[16] Barron says in his deposition: "I think we are speaking about, in a sense, two different people here—the Jack Soble as a Soviet agent and still under Soviet discipline, who was a professional agent, dissembling by nature and not necessarily immorally in his scheme of ethics as an agent, and then the Jack Soble who for reasons of his own decided to tell what he knew to the United States Government." Deposition of John Barron at 73.

Barron, Soble provided information to the Government after his arrest that proved "extremely useful and . . . quite reliable in many cases." [17] And in any event, according to Barron, the F.B.I. report clearly relied on sources other than Jack Soble in identifying Wolston as an agent.[18] Defendants Book-of-the-Month Club, Macmillan, and Bantam state that they relied on the reputation of Reader's Digest Press in concluding that *KGB* is accurate in every respect.[19] Defendant Reader's Digest admits that its liability in this suit is coextensive with that of John Barron, its employee.[20]

II. FIRST AMENDMENT RESTRICTIONS ON LIBEL LAWS

In determining the standard of fault that applies in a libel action, courts must strike a balance between First Amendment values, on the one hand, and the states' concern for protecting the reputations of their citizens, on the other. The Supreme Court in recent years has said that insofar as "public officials" and "public figures" are concerned, the balance must be struck in favor of the freedoms of speech and press. *New York Times* v. *Sullivan*, 376 U.S. 254 (1964); *Curtis Publishing Co.* v. *Butts*, 388 U.S. 130 (1967). Because would-be critics and commentators need "breathing space," or margin for error, if debate over "public issues . . . [is to] be uninhibited, robust, and wide-open," *New York Times*, *supra*, 376 U.S. at 270, libel plaintiffs who qualify as

[17] *Id.* at 72-73.

[18] Barron observes in his deposition that any information concerning Wolston the Government possessed in 1951 could not have come from Soble, who was arrested in 1957, *id.* at 71-72, and that the report, at page 24, makes no mention of Soble in categorically identifying Wolston as a Soviet agent, *id.* at 68-72. Of course, all of the Government's information concerning Wolston may have come indirectly through Soble, *e.g.* through Boris Morros in 1951.

[19] Affidavits of Al Silverman, Vice President and Editorial Director of Book-of-the-Month Club, Inc.; William Houghton, President of MacMillan Book Clubs, Inc.; Marcus Jaffe, Senior Vice President and Editorial Director of Bantam Books, Inc.

[20] Brief for Defendants at 17n. 45.

public officials or public figures must satisfy an exceptionally demanding burden of proof. They must establish with "convincing clarity" that the allegedly libelous statements concerning them were made with "actual malice" —that is, actual knowledge of falsity or reckless disregard for the truth. *Id.* at 279-80, 285-86. In *Rosenbloom* v. *Metromedia*, 403 U.S. 29 (1971), a plurality of the Court went still further, concluding that the Constitution accords similar protection to criticism of *private* individuals who become involved in areas of public interest.

In recent decisions a majority of the Supreme Court has made clear its determination that the Rosenbloom plurality failed, for constitutional purposes at least, to allow the states sufficient latitude to protect private individuals from libel. In *Gertz* v. *Robert Welch, Inc.*, 418 U.S. 323 (1974), the Court held that the Constitution does not compel application of the *New York Times* standard in a libel suit brought by a "private individual." Rather, the states' legitimate interest in protecting the reputations of private individuals is strong enough to justify permitting such persons to recover damages from publishers or broadcasters under any standard short of liability without fault. 418 U.S. at 339-48. The Court reiterated and applied this "public figure-private individual" distinction in *Time Inc.* v. *Firestone*, 424 U.S. 448 (1976).

In the present case much of the dispute centers on the meaning of *Gertz* and *Firestone* insofar as those decisions bear on the question whether Ilya Wolston qualifies as a public figure. Unfortunately, the line between "public" and "private" libel plaintiffs is not altogether clear, *see Firestone*, 424 U.S. at 484-93 (Marshall, J., dissenting), and the question here has therefore proved difficult to resolve. To do so, the court has had to consider the reasons why petitioner Gertz and respondent Firestone were found to be private individuals, not public figures.

The facts in *Gertz* are these: After a Chicago policeman was convicted of murder, the victim's family retained petitioner Gertz, a reputable attorney, to represent them in civil litigation against the convicted policeman.

Respondent's magazine then printed an article alleging that the prosecution had gained a conviction of the policeman on the basis of false testimony, that the murder trial was part of a Communist plan to discredit the police, that Gertz had participated in designing the "frame-up," and that Gertz served as a "Communist-fronter" and had a criminal record. In fact, the Court noted, Gertz had played no part whatever in the policeman's criminal trial and had no record of his own. He did attend the coroner's inquest into the boy's death but never discussed either the criminal or civil litigation with the press. 418 U.S. at 352.

Justice Powell's opinion for the majority of the Court recognizes two categories of public figures:[21]

> "In some instances an individual may achieve such pervasive fame or notoriety that he becomes a public figure for all purposes and in all contexts. More commonly, an individual voluntarily injects himself or is drawn into a particular public controversy and thereby becomes a public figure for a limited range of issues. In either case such persons assume special prominence in the resolution of public questions."

418 U.S. at 351. Although this language suggests that a person can become a public figure by being "drawn into" the public view, elsewhere in the opinion the Court made clear its emphasis on purposeful activity by which a person can be said to have breached his privacy himself and thereby to have increased the risk to his reputation:

> "Hypothetically, it may be possible for someone to become a public figure through no purposeful action of his own, but the instances of truly involuntary public figures must be exceedingly rare. . . .

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[21] In *Curtis Publishing Co.* v. *Butts*, and its companion, *Associated Press* v. *Walker*, 388 U.S. 130, 154-55 (1967), Justice Harlan had also recognized two categories of public figures—those who command a substantial amount of independent public interest at the time of the publication, attained through position alone or by purposeful activity amounting to a thrusting of one's personality into the vortex of an important controversy.

> . . . [P]ublic figures have voluntarily exposed themselves to increased risk of injury from defamatory falsehood concerning them."

418 U.S. at 345. Gertz, reasoned the Court, clearly did not qualify as a public figure for all purposes since he had achieved no general fame or notoriety in the community. *Id.* at 351-52. Moreover, the "nature and extent of . . . [Gertz's] participation in the particular controversy giving rise to the defamation" failed even to qualify him as a public figure for a limited range of issues. *Id.* at 352. Since he played no part in the criminal prosecution, never communicated with the press regarding either the criminal or civil litigation, and, essentially, participated in the controversy only to the extent necessary to represent his clients' interests, he "plainly did not thrust himself into the vortex of this public issue, nor did he engage the public's attention in an attempt to influence its outcome." *Id.* Thus, under the Court's rationale, it would be improper to conclude that he had "relinquished . . . [any] part of his interest in the protection of his own good name." *Id.* at 345.

In *Firestone*, the Court's most recent decision concerning the line between public figures and private individuals, respondent was the wife of the scion of one of America's wealthiest industrial families. In determining that she did not qualify as a public figure, even for the limited range of issues relating to her highly publicized divorce proceeding,[22] the Court emphasized the absence of "voluntariness" as its basis for concluding that respondent had not sacrificed her interest in protecting her reputation. For the privilege to attach, the Court reasoned, the defamatory communication must concern a "public controversy;" but respondent's divorce proceeding, albeit an object of curiosity, was not the sort of controversy the Court had in mind. 424 U.S. at 454. Moreover, said the Court, the allegedly defamed individual must have voluntarily exposed herself to increased risk of defamatory

[22] After Mrs. Firestone sued her husband for separate maintenance, her husband filed a counterclaim for divorce. The Florida Supreme Court characterized the trial as a "cause célèbre." 424 U.S. at 454.

injury; but for respondent, "resort to the judicial process . . . [was] no more voluntary in a realistic sense than that of the defendant called upon to defend his interests in court." *Id.*, quoting from *Boddie* v. *Connecticut*, 401 U.S. 311, 376 (1971). Rather, if she was to obtain separate maintenance, she had no choice but to go to court. 424 U.S. at 454. And even though she had held press conferences during the much publicized divorce proceeding, "she did not thrust herself to the forefront of any particular public controversy in order to influence the resolution of the issues involved in it." *Id.* at 453.

III. APPLICABILITY OF THE CONSTITUTIONAL STANDARD

Ilya Wolston apparently led a thoroughly private existence and was generally unknown before receiving his first subpoena, early in 1957, and after that as well, until his failure to appear before the special grand jury became public knowledge. After the flurry of publicity attending his conviction ceased, he apparently succeeded, for the most part, in resuming his private ways. Accordingly, defendants make no claim that his contempt conviction achieved for him pervasive fame or notoriety[23] or that he wields the sort of power and influence that would otherwise qualify him as a public figure for all purposes and in all contexts. Rather, the question here is whether Wolston's failure in 1958 to testify before the grand jury investigating espionage and his resultant contempt conviction qualify him as a public figure for a limited range of issues. As defendants have put it, the question is whether Wolston is a public figure for purposes of comment on his connection with, or involvement in, Soviet espionage in the United States.

[23] In assessing Wolston's "notoriety," this court limits itself to consideration of his contempt conviction and subsequent coverage of that conviction. For if, as Wolston contends, allegations that he was a Soviet agent are libelous, then any notoriety springing from those allegations has no bearing on the issue here. The Supreme Court's decisions require purposeful activity on plaintiff's part; thus libel alone—particularly the very libel on which a lawsuit is based—cannot rob a person of his status as a private individual.

Wolston derives from *Gertz* and *Firestone* the proposition that only a select few libel plaintiffs qualify for constitutional purposes as "limited-issue" public figures. Those, he says, are people who have purposefully sought the public's attention in order to sway public opinion; people who have "mounted a public rostrum, made an appeal to the public, sought or received public funds, offered a service or product for public use or comment, or organized a boycott or other group activity by other members of the public." *Afro-American Publishing Co.* v. *Jaffe*, 366 F.2d 649, 658 (D.C. Cir. 1966). But the last thing Wolston wanted, according to him, was to engage the public's attention or to influence anyone in any way whatever. Relying on language in *Gertz*, Wolston contends "he has never thrust himself to the forefront of any controversy. Nor has he had the power of influence to resolve any public debate." Brief for Plaintiff at 10. Moreover, he claims, *Firestone* "made it clear that merely being a party to civil litigation or being brought before the court as a criminal defendant does not work a metamorphosis transforming a private person into a public figure." Brief for Plaintiff at 11. In this connection Wolston observes that his "first and only public appearance" occurred in a courtroom and that he appeared there only "at the behest of the state." *Id.* at 10-12. He also claims that even if his actions in 1958 did qualify him as a public figure for purposes of comment at the time, it can scarcely be said that he was in any sense a public figure in 1974, when defendants published *KGB*. Finally, he reasons, the privilege is designed to protect reporters and the news media, not defendants such as these who had ample time to investigate any potentially libelous statements they intended to publish.

The court finds Wolston's arguments eloquent and well-reasoned.[24] It cannot agree, however, with his literal, restrictive interpretations of *Gertz* and *Firestone*. To be

[24] Wolston's conceptualization of a public figure is appealing, since the people he describes—individuals with power to attract the public's attention in order to influence the resolution of important issues—are, but for lack of public office, similar to public officials. Thus it is easy to conclude that they can claim a lesser

sure, those cases narrow the privilege articulated by the plurality in *Rosenbloom*. Indeed, the Supreme Court has seen fit to turn inside out the rule espoused in *Rosenbloom* by concluding that private individuals generally do *not* become public figures solely by virtue of involvement, however slight, in matters of general or public concern. Nevertheless, this court is not convinced that the Supreme Court means to limit public-figure status to persons with power and influence or, for that matter, even to persons who have purposefully sought to engage the public's attention. Rather, as the Court said in *Gertz*, "[i]t is preferable to reduce the public-figure question to a more meaningful context by looking to the nature and extent of an individual's participation in the particular controversy giving rise to the defamation." 418 U.S. at 352. *See also Ryder* v. *Time, Inc.*, Civil No. 76-1909 (D.C. Cir. 1976), slip opinion at 5. And the nature of an individual's participation might be significant, and the extent substantial, whether or not he actually craves the public's attention or wields power and influence. Thus, for example, one individual might seek to remain a recluse, and yet, by virtue of his power and influence, qualify as a public figure. And by the same token, a virtual nonentity desiring no attention at all may, by engaging in activity that appears to affect the public's well-being, qualify as well. In each case the public has a legitimate interest in knowing about the individual's activities, and he can be said to have sacrificed a measure of his interest in protecting his reputation. For there are many ways by which a person can "mount the public rostrum," and when one does so the privilege must arise. This is so because we have embraced a "profound national commitment to the principle that debate on *public issues* should be uninhibited, robust, and wide-open," *New York Times*, *supra*, 376 U.S. at 270 (emphasis added); and because that debate necessarily encompasses discussion about the activities of individuals who assume

interest in protecting their reputations than that of private individuals. The public has an inense interest in knowing about such people in order better to assess the positions they espouse, and the media therefore require "breathing space" in criticizing them.

central or prominent roles in the unfolding of those issues.

In this court's opinion, *Gertz* contemplates two principle considerations in determining whether a person qualifies as a limited-issue public figure.[25] First, the plaintiff must have become involved in a "public controversy;"[26] if he has not done so, the First Amendment interest at stake is insubstantial. Although the Supreme Court has not explained exactly what it means by this concept,[27] *Firestone* seems to indicate that matters which are essentially private, such as the issues in a divorce proceeding, do not become public for purposes of libel law solely because they are aired in a public forum.[28] Thus, although divorce itself may be an important subject of debate, discussion of the details of

[25] *See Martin Marietta Corp.* v. *Evening Star Newspaper*, 417 F. Supp. 947 (D.D.C. 1976).

[26] In *Gertz* the Court rejected the *Rosenbloom* plurality's determination that "public concern" constituted a sufficient basis for mandatory application of the actual malice test. In both *Gertz* and *Firestone*, however, the Court seemed to regard a "public controversy" as a prerequisite for mandatory application of the test—that is, there must exist a controversy into which the putative public figure can have thrust himself.

[27] The Court has employed similar language on several occasions. In *Curtis Publishing Co.* v. *Butts*, 388 U.S. 130 (1967), Justice Harlan spoke of an "*important* controversy," but provided no criteria for gauging "importance." *Id.* at 155 (emphasis added). In *Rosenbloom* v. *Metromedia*, 403 U.S. 29 (1971), the plurality spoke of areas of "*general or public interest*," but provided no standards for measuring that "interest." Id. at 43 (emphasis added). In *Gertz*, the Court sought to relieve courts of the responsibility for determining the public interest in the context of libel suits, but nonetheless referred to a "public figure" as an individual who involves himself in a "*public controversy*." 418 U.S. at 351. In *Firestone*, the Court provided little further guidance, saying only that "[d]issolution of a marriage through judicial proceedings is not the sort of 'public controversy' referred to in *Gertz*, even though the marital difficulties of extremely wealthy individuals may be of interest to some portion of the reading public." 424 U.S. at 454.

[28] The Court said that *Gertz* "should make it clear that no such blanket privilege for reports of judicial proceedings is to be found in the Constitution." 424 U.S. at 456.

particular divorces generally does little to advance that debate and therefore does not require the degree of insulation from suit accorded by the standard in *New York Times*. Simply stated, it is not necessary to treat every participant in a divorce proceeding as though he or she were a public figure. Second, the plaintiff's involvement in the controversy must have been in some sense voluntary, as well as significant. The Constitution, according to the Supreme Court, respects the states' interest in protecting the reputation of a person who has done nothing—or very little—to sacrifice it himself. Rarely, therefore, does the Constitution require the states to attach public-figure status to the mere act of entering the doors to the courthouse. For most litigants, like respondent Firestone, have no other means of obtaining redress; if she wanted separate maintenance, she had no alternatives but to go to court.[29] And petitioner Gertz, by providing counsel to the victim's family, played at most a supporting role in the controversy over the conduct of Chicago's police. Neither of them, accordinging to the Court, sacrificed any interest he otherwise had in protecting his reputation.

It is the court's opinion that Ilya Wolston does qualify under *Gertz* and *Firestone* as a public figure[30] for the limited purpose of comment on his connection with, or involvement in, espionage in the 1940's and '50's. This

[29] The Supreme Court's opinion proceeds on the assumption that Mrs. Firestone had no alternative: "Nor did respondent freely choose to publicize issues as to the propriety of her married life." 424 U.S. at 454.

[30] The court notes that it regards the determination of public-figure status as a question of law, which the court, not the jury, must resolve. In *Rosenblatt* v. *Baer*, 383 U.S. 75 (1965), the Supreme Court observed that, "as is the case with questions of privilege generally, it is for the trial judge in the first instance to determine whether the proofs show respondent to be a 'public official.'" *Id.* at 88. "Such a course will both lessen the possibility that a jury will use the cloak of a general verdict to punish unpopular ideas or speakers, and assure an appellate court the record and findings required for review of constitutional decisions." *Id.* at 88n. 15. In accord in the public-figure context, *Rosanova* v. *Playboy Enterprises, Inc.*, 411 F. Supp. 440 (S.D. Ga. Sav. Div. 1976); *Hotchner* v. *Castille-Puche*, 404 F. Supp. 1041 (S.D.N.Y. 1975).

is so essentially because he involved himself in the espionage controversy in a way that unquestionably invited attention and comment. Indeed, a contempt conviction for failure to appear before a grand jury investigating espionage invites press and public alike to ask the very questions which the alleged libel in this case purports to answer, namely: "Why did he fail to appear? What was his connection with the investigation?" Refusal to extend the constitutional privilege to answers to those questions which the press believes to be true (or about which it has no serious doubts) would serve to muzzle, rather than to encourage, the debate which the First Amendment is designed to foster.

Applying the considerations articulated in *Gertz* and *Firestone*, the court has no doubt whatsoever that espionage qualifies as a "public controversy," however that concept might be defined. For the issues espionage embraces are public ones in every respect. This is so not merely because of the importance of the subject to the public; this is so also because full airing of the subject necessarily requires discussion of the activities of the particular people who involved themselves with espionage in a significant way. And the list surely includes people convicted of contempt in an espionage setting, as well as people convicted of espionage itself. Moreover, although the question is a more difficult one,[31] the court is persuaded that, in choosing not to appear before the grand jury, Wolston breached his privacy himself and thereby relinquished a measure of his interest in protecting his reputation. To be sure, he probably would have preferred not to have become involved in the controversy in the first place; a subpoena interrupted his private existence in Washington, D.C. But the subpoena did not require Wolston to appear in public; on the contrary, compliance

[31] In *Anderson* v. *Stanco Sports Library, Inc.*, Civil No. 75-2031 (4th Cir. 1976), the court, noting the complexity of the issue, managed to avoid determining whether a convicted murderer qualifies as a public figure. *Compare Rosanova* v. *Playboy Enterprises, Inc.*, 411 F. Supp. 44 (S.D. Ga. Sav. Div. 1976), where the court based a finding that Tony Rosanova is a public figure on his alleged underworld involvements and his contacts with the Teamster's Union.

with it might have enabled him to have preserved his anonymity.[32] In choosing not to comply, Wolston knew, or certainly should have known, that he would attract attention—again, precisely the sort of attention that he challenges in this case.[33] He cannot now be heard to

[32] Grand jury proceedings are insulated from the public's view *See* Rule 6(e), Fed. R. Crim. P., which continues the traditional practice of requiring participants in grand jury proceedings, with the exception of witnesses, to refrain from discussing those proceedings with the public. Secrecy has long been the federal policy and was the rule at the time of Wolston's contempt trial. *See, e.g., Goodman* v. *United States*, 108 F.2d 516 (9th Cir. 1940). Thus it would be incorrect to say that Wolston was compelled—by the subpoena at least—to appear in a public forum. Accordingly, from January 1, 1957 to June 30, 1958, the period in which he testified on several occasions before the grand jury, he apparently received no publicity at all. Deposition of Ilya Wolston at 62-72.

[33] In Wolston's affidavit he describes extenuating circumstances, such as problems with his health, which he claims bore on his failure to travel to New York to testify on July 1, 1958. From this evidence the court could infer that Wolston's decision not to appear was in some sense involuntary, that in fact he had no desire whatever to sacrifice the grand jury's cloak of secrecy but was forced to do so by circumstances beyond his control. In Defendant's Reply Memorandum they seek in turn to show that Wolston intentionally thwarted the Government's investigation, and go so far as to submit an affidavit that an Assistant United States Attorney executed in 1958 in support of the Government's motion to hold Wolston in contempt.

The court is not persuaded that such considerations have any bearing on the issue before it. For one thing, the federal judge who accepted Wolston's guilty plea presumably passed on the question of "voluntariness," and this court sees no reason why it should examine his findings. More importantly, the court is persuaded that "subjective" or actual voluntariness ought not to be a factor in the determination whether a particular libel plaintiff qualifies as a public figure. As the Supreme Court observed in *Gertz*, "the communications media are *entitled to act on the assumption* that . . . public figures have voluntarily exposed themselves to increased risk of injury from defamatory falsehood concerning them." 418 U.S. at 345 (emphasis added). And inasmuch as the media have no way of ascertaining with certainty—much less of proving—the actual thought processes of a putative public figure but instead must rely on objective indicia of his intentions, and the public's interest in knowing about his activities might be substantial regardless of his intentions, the standard must be an objective one. The concept of breathing space is simply incompatible with a test that

complain that someone noticed him, unless he can prove actual malice. For answers to the questions raised by Wolston's conviction, whether right or wrong, fall within the ambit of the constitutional privilege. As the Supreme Court has observed repeatedly, the freedoms of speech and press embodied in the First Amendment could not be fully realized and preserved if the press were obliged either to guarantee the truth of its assertions, or to refrain from making them.

Wolston's other arguments—that he is no longer a public figure and that the privilege belongs only to the press, not to the authors and publishers of a book—are unavailing. Surely historical comment on the espionage-related activities of Wolston and others who became involved in the controversy during the 1950's requires just as much protection as did media coverage of the events

forces the media either to comprehend a person's motives, or to refrain from commenting on his actions. Normally, then, in the context of the First Amendment the press must be entitled to assume that an individual's acts are voluntary unless it has good reason to believe otherwise. If, moreover, an individual engages in activity that reasonably appears to constitute a breach of his privacy and to involve him in a controversy that is essentially public in nature, the privilege will arise. To be sure, these concepts are general at best and the press might find it difficult to resolve the questions they raise in particular cases. Nevertheless, the distinctions between *Firestone* and Wolston's case seem fairly clear. In *Firestone*, which the Court saw fit to treat essentially as an "ordinary" divorce, the Court determined that an individual ordinarily does not sacrifice any part of his interest in protecting his reputation simply by bringing a marital dispute to court. As suggested previously, such disputes involve issues that are essentially private in nature, and the participants have no other means of seeking relief. By contrast, it is not difficult to conclude that Wolston did sacrifice a measure of his interest in protecting his reputation by subjecting himself to contempt charges and pleading guilty. In no sense did the Government compel him to remain at home on July 1, 1958. He might instead have chosen to comply with the subpoena or, like respondent Firestone, to go to court to vindicate whatever he may have had not to comply with it. When he failed to choose either of these alternatives, he became involved in a controversy of a decidedly public nature in a way that invited attention and comment, and thereby created in the public an interest in knowing about his connection with espionage that outweighed his competing interest in remaining anonymous.

as they occurred. The Constitution does not confine debate on public issues and the roles of people involved in them to discrete and brief periods of time.[34] Moreover, the need hurriedly to print "hot news" [35] is but one of the rationales supporting the public-figure concept. Authors and publishers of books, like their news-media counterparts, are simply unable to guarantee the truth of each and every word they print.[36] To be sure, they

[34] In *Brewer* v. *Memphis Pub. Co., Inc.*, 538 F.2d 699 (5th Cir. 1976), the court of appeals observed that the Supreme Court's decisions leave open the question whether a "person who has been a public figure in the past can retreat to private status and obtain the lesser standard of proof required for damages for injury from libel." *Id.* at 703. The court of appeals remanded the case to the trial court to resolve this issue as well as others.

However, in *Time* v. *Johnson*, 448 F.2d 378 (4th Cir. 1971), the court stated that:

> "Mere passage of time will not necessarily insulate from the application of *New York Times* v. *Sullivan*, publications relating to the past public conduct of a then "public figure." No rule of repose exists to inhibit speech relating to the public career of a public figure so long as newsworthiness and public interest attach to events in such public career."

Id. at 381.

[35] The "hot news" rationale is misleading. This is so because the argument that the press must act quickly (and therefore lacks time to investigate) while the author of a book has plenty of time (and therefore can investigate extensively) seems, at first blush, to be a persuasive reason for requiring authors of books to act reasonably, or at least not too unreasonably. But the argument misses the point. Indeed, were "hot news" the only, or even the dominant, consideration, even *New York Times* might have been decided differently. There is nothing inherently unreasonable about quick decisions; the Court might have decided to require the press simply to conduct a reasonable investigation under the circumstances, e.g. the time available, the risk to reputation, and so on. Instead, the Court saw fit to require no investigation whatsoever in *New York Times*, a case involving an advertisement, not a "hot news" item.

The point, very simply, is that the strictures of objective reasonableness are incompatible with vigorous commentary on the public activities of public officials and public figures, whether the commentator is the press or the author of a book.

[36] In *Meeropol* v. *Nizer*, 381 F. Supp. 29 (S.D.N.Y. 1974), the court found that the sons of Julius and Ethel Rosenberg were public figures notwithstanding the fact that the children had "renounced

may well have greater opportunity to investigate the truth of their assertions, and this might bear on a finding of actual malice. But to impose on them the burden of acting as would a reasonably prudent person under the circumstances—under either a negligence or gross negligence standard—would doubtless lead to destructive self-censorship. For reasonable people might differ about the amount of time, money, and manpower necessary to complete an adequate investigation, and these differences could become either the bases for a host of lawsuits or for decisions not to publish. Insofar as public figures are concerned, the Constitution accords breathing space to publishers in order to avoid these results and, instead, to encourage publishers not to refrain from printing criticism unless they know it is false or have serious doubts about the truth of it.[37]

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the public spotlight by changing their name." *Id.* at 34. The alleged libel appeared in Nizer's book *The Implosion Conspiracy*, yet the court's opinion makes no mention of the question whether authors and publishers of books can claim the protection afforded by the actual-malice standard. Implicitly, of course, the court resolved that question in favor of the defendants.

[37] The court might also have decided to apply the actual-malice standard in this case on the ground that the law in the District of Columbia requires it. In *Hatter* v. *Evening Star Newspaper Co.*, Civil No. 8298-75 (Sup. Ct. D.C. March 15, 1975), a Superior Court Judge observed that state courts may, under *Gertz*, establish lesser standards of fault in libel suits and nevertheless saw fit to embrace the *New York Times* standard in a suit concerning a "private individual" who became involved in a matter of "public concern." Surely Wolston would be required to prove actual malice under this test. And whether or not the *Erie* doctrine is mandated in diversity actions brought in the District of Columbia, *see Martin Marietta Corp.* v. *Evening Star Newspaper*, 417 F. Supp. 947, 957 n.9 (D.D.C. 1976); *Luck* v. *Baltimore & Ohio R.R.*, 352 F. Supp. 331, 334 (D.D.C. 1972), or in an area of substantive law to which the highest state court has not spoken, this court, believing that the Superior Court has adopted the best available rule, would have followed that court's lead were it necessary to do so.

IV. APPLICATION OF THE CONSTITUTIONAL STANDARD

The court of appeals for this jurisdiction has observed that summary procedures are especially appropriate in the First Amendment area, *Washington Post Company* v. *Keogh*, 365 F.2d 965, 968 (D.C. Cir. 1966), *cert. denied*, 385 U.S. 1011 (1967). For the *New York Times* principle is designed in part to avoid the "chilling effect" on freedom of speech and press that inheres in the threat of being put to the defense of a lawsuit. *Id.*; *see also Dombrowski* v. *Pfister*, 380 U.S. 479, 487 (1965). Accordingly, defendant's motion should be granted if plaintiff is unable to establish clearly and convincingly that defendants acted with actual malice. *See, e.g., Miller* v. *News Syndicate Co.*, 445 F.2d 356 (2d Cir. 1971); *Bon Air Hotel, Inc.* v. *Time, Inc.*, 426 F.2d 858 (5th Cir. 1970); *Washington Post Co.* v. *Keogh*, 365 F.2d 965 (D.C. Cir. 1966), *cert. denied*, 385 U.S. 1011 (1967).

The Supreme Court has dealt with the concept of actual malice on a number of occasions, and the concept is now well-defined. Thus, actual malice is quite different from commonlaw malice, which is generally required under state tort law to support an award of punitive damages and which focuses on the defendant's attitude toward the plaintiff. Actual malice focuses instead on the "defendant's attitude . . . toward the truth or falsity of the material published." *Cantrell* v. *Forest City Publishing Co.*, 419 U.S. 245, 252 (1974); *Time, Inc.* v. *Hill*, 385 U.S. 374, 396 n.12 (1967). In *New York Times* the Court defined the requisite attitude as either knowledge that the statement was false or reckless disregard for the truth or falsity of the statement. 376 U.S. at 280. In subsequent cases the Court has made clear that the issue focuses on the defendant's state of mind. In *Garrison* v. *Louisiana*, 379 U.S. 64, 74 (1964), the Court stated that plaintiff must demonstrate a "high degree of awareness of . . . probable falsity." And in *St. Amant* v. *Thompson*, 390 U.S. 727 (1968), the Court observed:

> "[R]eckless conduct is not measured by whether a reasonably prudent man would have published, or

> would have investigated before publishing. There must be sufficient evidence to permit the conclusion that the defendant *in fact entertained serious doubts* as to the truth of his publication. Publishing with such doubts shows reckless disregard for truth or falsity and demonstrates actual malice."

Id. at 731 (emphasis added).

The record in this case fails to demonstrate clearly and convincingly that Barron or any of his co-defendants entertained serious doubts or, for that matter, any doubts about the truth of the statements in *KGB* that connect Wolston with espionage. Rather, Barron has stated under oath that he "was confident upon publication of *KGB* that the book as a whole and each and every statement in it were true, and . . . was aware of no fact that tended to make . . . [him] doubt the truth of the book or of any statement in it," Affidavit of John Barron at 2; and the record contains scarcely any evidence at all tending to impeach Barron's assertions. To be sure, sworn-to reliance on a report by the F.B.I. might seem, in light of events in recent years, to be risky business. But reliance on an F.B.I. report, absent an independent basis for entertaining serious doubts about its accuracy, falls far short of the level of questionable activity necessary to raise a genuine issue with regard to actual malice. *Compare, e.g., Carson* v. *Allied News Co.*, 529 F.2d 206 (7th Cir. 1976); *Airlie Foundation, Inc.* v. *Evening Star Newspaper Co.*, 337 F. Supp. 421 (D.D.C. 1972). *See also Briscoe* v. *Reader's Digest Association, Inc.*, No. LTL 71-245 (C.D. Cal. 1972) (unpublished order granting summary judgment to defendants who relied on an F.B.I. report of a hijacking incident involving plaintiff Briscoe). And Barron's knowledge of Soble's reputation as a liar is too slender a reed to support a judgment in Wolston's favor. Without reference to Soble the F.B.I.'s report categorically identifies Ilya Wolston on page 24 as a "Soviet intelligence agent;" at page 26 the report states that the Government had information supporting "the probable identification of Wolston as a Soviet agent" as early as 1951, well before Soble was arrested. And

in any case, even if Soble was directly or indirectly the Government's only source of information concerning Wolston, Barron knew that, *after* Soble was arrested, he provided information to the Government that proved "extremely useful and . . . quite reliable in many cases." Deposition of John Barron at 73. Moreover, and perhaps most important, despite the fact that Barron devoted over four years to researching and writing *KGB*, and did so with the assistance of a sizeable research staff, *id.* at 45-48, not a shred of evidence emerged suggesting that Wolston had ever objected to the assertions about him in Morros's book, published in 1959, or in the F.B.I.'s report, published in 1960.[38] Under the circumstances, the court is satisfied not only that Barron did place his faith in the accuracy of the report, but also that he had ample reason to do so notwithstanding his awareness of the reputation for untrustworthiness which Soble had earned while acting as an undercover intelligence agent.

The court agrees with Wolston that the footnote at page 188 of the Reader's Digest edition of *KGB* appears to state falsely that he was indicted for espionage. Nevertheless, the statement is ambiguous; Barron's explanation of it is plausible and, in the court's opinion, offered in good faith. *See St. Amant* v. *Thompson*, 390 U.S. 727, 732 (1968); *Time Inc.* v. *Pape*, 401 U.S. 279 (1971). In such circumstances this court has recently said:

> "In the absence of any proof, other than the document itself, that defendants entertained serious doubts about the possibility of a defamatory interpretation, plaintiff's case is not one of 'convincing clarity,' as is constitutionally required. The language in the editorials, itself ambiguous and susceptible of different interpretations, cannot render the defendants' statements of good faith belief 'so inherently

[38] In his deposition Wolston states that he learned of the F.B.I.'s report only recently, was unaware of Morros's book until the late 1960's, and remained silent about the latter out of concern for making matters worse. Deposition of Ilya Wolston at 91. None of this has any bearing, of course, on Barron's belief that the F.B.I.'s report is accurate.

improbable that only a reckless man would have so worded the editorials.' "

Buckley v. *Washington Post Co.*, Civil No. 74-1203 (D. D.C. June 29, 1976), slip opinion at 7. Thus, even though the court in *Buckley* agreed with plaintiff that the publication in question there was susceptible to a defamatory interpretation, it granted summary judgment to the defendants. For the publication did not "unambiguously state . . . the contrary of what defendant said he meant," *id.* at 9, and therefore could not by itself support a finding of actual malice. That principle is applicable here as well.

Finding no genuine issue raised with respect to actual malice on Barron's part, the court must grant his motion for summary judgment. The court must also grant summary judgment to each of the other defendants, since there is no basis in the record for concluding that any of them had serious doubts about the truth of the statements they published concerning Wolston.

It is so ordered.

/s/ William B. Bryant
United States District Judge
January 31, 1977

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 77-1329

ILYA WOLSTON, APPELLANT

v.

THE READER'S DIGEST ASSOCIATION, INC., ... d/b/a Reader's Digest Press, ET AL.

Appeal from the United States District Court for the District of Columbia

(D.C. Civil 75-459)

Argued February 15, 1978

Decided May 23, 1978

Sidney Dickstein with whom *Stephen G. Kozey* was on the brief for appellant.

John J. Buckley, Jr., with whom *John W. Vardaman, Jr.* was on the brief for appellees.

Before: ROBINSON, MACKINNON and ROBB, *Circuit Judges*

Opinion for the Court filed by *Circuit Judge* ROBB.

ROBB, *Circuit Judge*: In this action for libel Ilya Wolston sues the author, John Barron, and the publishers of a book entitled "KGB: The Secret Work of Soviet Secret Agents". The defendant The Reader's Digest Association, Inc. (Reader's Digest) is the initial publisher and the defendants Bantam Books, Inc., Book-of-the-Month Club and MacMillan Book Clubs, Inc., are subsequent publishers

under contract arrangements with Reader's Digest. The District Court granted summary judgment for the defendants. *Wolston* v. *Reader's Digest Ass'n*, 429 F. Supp. 167 (D.D.C. 1977).

Wolston is the nephew of one Jack Soble who in April 1957, in United States District Court for the Southern District of New York, pled guilty to an indictment charging espionage. On the same day his wife Myra Soble also pled guilty to this offense. In October 1957 they were sentenced to the penitentiary.

The grand jury investigation of espionage continued after the indictment of the Sobles. Wolston was subpoenaed to appear before the grand jury in New York and he did appear on several occasions. On July 1, 1958 he failed to appear. As a result, in August 1958, he was charged with criminal contempt and on his plea of guilty was placed on probation for three years conditioned on his being available to process of the court within that period. The contempt proceeding generated some fifteen newspaper stories in the District of Columbia, where Wolston lived, and in New York. Thereafter, in 1959, Wolston's name appeared in a book entitled "My Ten Years As a Counterspy", written by Boris Morros, a former confederate of Soble. According to Morros, Soble identified Wolston to him as a Soviet agent who had furnished Soble information. Wolston was also identified as a Soviet agent in an FBI Report "Expose of Soviet Espionage", published in 1960 by the Senate Internal Security Subcommittee of the Committee on the Judiciary, United States Senate.

KGB was first published in January 1974. The alleged libel appears in the following passage in *KGB*, referring to disclosures by "royal commissions in Canada and Australia, and official investigations in Great Britain and the United States":

> Among Soviet agents identified in the United States were Elizabeth T. Bentley, Edward Joseph Fitzgerald, William Ludwig Ullmann, William Walter Remington, Franklin Victor Reno, Judith Coplon, Harry Gold, David Greenglass, Julius and Ethel Rosenberg, Morton Sobell, William Perl, Alfred Dean Slack, Jack Soble, *Ilya Wolston*, Alfred and Martha Stern.*
>
> * No claim is made that this list is complete. It consists of Soviet agents who were convicted of espionage or falsifying information or perjury and/or contempt charges following espionage indictments or who fled to the Soviet bloc to avoid prosecution. [Emphasis supplied][1]

The District Court granted summary judgment for the defendants upon the ground that Wolston was a public figure for the limited purpose of comment on his connection with, or involvement in, espionage, and that the evidence raised no genuine issue with respect to the existence of actual malice on the part of the defendants. We affirm.

PUBLIC OR PRIVATE FIGURE— A QUESTION OF LAW

The District Court held that whether Wolston was a public figure was a question of law, to be decided by the court. Wolston contends that in this the court erred because "this complex factual question . . . . whether plaintiff is a public figure is properly a jury matter." We think the District Court was right. In *Rosenblatt* v. *Baer*, 383 U.S. 75, 88 (1966) the Court remarked that "as is the case with questions of privilege generally, it is for the trial judge in the first instance to determine whether the proofs show respondent to be a 'public official' ". We think the same rule should be applied when the question is whether a plaintiff is a "public figure". The Court observed "[s]uch a course will both lessen the possibility that a jury will use the cloak of a general verdict to punish unpopular ideas or speakers, and assure an appellate court the record and findings required for review of constitutional decisions." 383 U.S. 88 n.15. We add that a jury of laymen is hardly qualified to apply the nice and sometimes intricate distinctions be-

[1] Wolston also complains of the index to the book which lists him as Wolston, Ilya, Soviet Agent in U.S.

tween public and private figures which have been developed in the cases following *New York Times Co.* v. *Sullivan*, 376 U.S. 254 (1964). Application of those rules and distinctions is anomalous to a court's ruling on the question of probable cause for a search and seizure, a matter which of course is for the court and not the jury. We note furthermore that counsel is unable to cite any case in which a jury has been permitted to decide whether a plaintiff, as a matter of "constitutional fact", is a public figure. On the contrary, the question has always been held to be one for the court. *See Hotchner* v. *Castillo-Puche*, 404 F. Supp. 1041, 1043-47 (S.D.N.Y. 1975) (order denying summary judgment).[2]

Wolston argues that there was an issue of fact concerning his intention in failing to appear before the grand jury and in subjecting himself to a contempt proceeding. The issue he says was whether in so doing he intended to mount a public rostrum and to participate in the debate concerning espionage investigations. We conclude however that the undisputed facts demonstrate that he became a public figure, whatever his subjective intention might have been. We therefore turn to a consideration of the undisputed facts.

WOLSTON A PUBLIC FIGURE

The plaintiff Ilya Wolston was born in Russia in 1918 and later lived in Lithuania, Germany, France, and England. In 1939 he came to the United States and in 1943 became a naturalized citizen. He was drafted into the United States Army in 1942, trained as a Russian interpreter, and served primarily in Alaska as a liaison to Soviet military personnel. After his discharge in 1946, he worked as an interpreter for the United States Military Government and the Department of State in Allied-occupied Berlin. On his return to the United States in 1951, Wolston first worked as a clerk, then enrolled in

[2] A judgment for the plaintiff in this case was reversed but the District Court's ruling on his status as a public figure was not disturbed. Hotchner v. Castillo-Puche, 551 F.2d 910, 911 (2d Cir.), *cert. denied*, 98 S.Ct. 120 (1977).

an undergraduate program, and in 1955 moved to Washington, D.C. to work for several months for the Army Map Service and finally as a free-lance translator until 1957.

On January 25, 1957 Wolston's aunt and uncle, Myra and Jack Soble, were arrested on espionage charges by agents of the Federal Bureau of Investigation. They were indicted on February 4, 1957 on five counts charging espionage, conspiracy, and violation of the Registration Acts. In April 1957 Jack Soble pled guilty to espionage and was sentenced to imprisonment for seven years. On the same day the Sobles were arrested, Wolston was interviewed at his home by the F.B.I. Shortly thereafter he was subpoenaed to appear before a federal special grand jury convened in the Southern District of New York, to investigate the activities of Soviet intelligence agents in the United States. Wolston was interviewed by the F.B.I. on at least three more occasions in connection with the grand jury's investigation and he made trips to New York in response to subpoenas.

On July 1, 1958 Wolston failed to respond to a grand jury subpoena directing him to appear on that date. On July 14, 1958 a federal district judge ordered that Wolston show cause why he should not be held in criminal contempt of court. These events immediately attracted a significant amount of public attention and coverage by newspapers. On July 15 and 16, at least seven news stories were published in New York and Washington, D.C., newspapers, focusing on Wolston's failure to appear and the court's show cause order. The stories were headlined "Spy Inquiry Hunts Nephew of Soble," "Hunt Soble Kin for Spy Data," "Soble Nephew Facing Jail in Spy Quiz Snub," "Soble Nephew Faces Rap for Probe Dodge," "Court Calls Spy's Nephew," and "Kin of Soble Faces Quiz on Contempt." (App. 270-271, 273-275, 280-281) The stories reported statements by Assistant United States Attorney Herbert C. Kantor that Wolston had been in contact with the Sobles for a long time before their arrest in January 1957. Three of the stories reported a statement by Mr. Kantor that Wolston was believed to have material information about the espionage matters

under investigation, described in one story quoting Kantor as a "general criminal conspiracy against the U.S." (App. 274) The stories noted that Wolston had served as an interpreter at the U.N. conference in San Francisco, for the military government in Germany and in the Office of the United States High Commissioner of Germany.

On July 29, 1958 at least two newspapers reported that the judge presiding at the contempt hearing commented that "there is no question in my mind that there was a studied attempt [by Wolston] to avoid [an] appearance before this grand jury." (App. 279, 284) Three newspaper stories reported Mr. Kantor's statement that Wolston had previously failed to appear in answer to five different subpoenas, each time submitting a doctor's certificate the day before his scheduled appearance. In the subsequent contempt proceeding, Mr. Kantor submitted an affidavit stating that Wolston had failed to appear on several prior occasions in response to subpoenas.

On August 7, 1958 Wolston pled guilty to the charge of criminal contempt of court, and on August 8, his guilty plea was reported in two newspapers. On August 13, Wolston received a one-year suspended sentence on his guilty plea, and he was placed on probation for three years on condition that he be available to appear before another espionage grand jury if one were convened. The following day, August 14, three newspapers reported the sentence and the probation terms. One headline read "Sets Soble Kin Free—If He'll Talk on Spies". (App. 277)

The District Court held that under the standards of *Gertz* v. *Robert Welch, Inc.*, 418 U.S. 323 (1974) and *Time, Inc.* v. *Firestone*, 424 U.S. 448 (1976) Wolston qualified "as a public figure for the limited purpose of comment on his connection with, or involvement in, espionage in the 1940's and '50's". 429 F. Supp. at 176. [footnote omitted] We agree. By failing to appear before the grand jury Wolston invited public attention and comment. Until that failure occurred he enjoyed obscurity in the wings, but by subjecting himself to a citation for contempt he voluntarily stepped center front into the spotlight focused on the investigation of Soviet espionage. In short, by his voluntary action he invited attention and

comment in connection with the public questions involved in the investigation of espionage. The reference to him in *KGB* related strictly to those issues, without intruding into his personal life or affairs. *Cf. Time, Inc.* v. *Johnston*, 448 F.2d 378, 381 (4th Cir. 1971). Any contention that his appearance on the stage was involuntary is conclusively answered by his conviction for contempt.

KGB was published in 1974, sixteen years after Wolston's appearance on the public stage in New York. He argues that even if he once was a public figure for a limited purpose the passage of time has restored him to the status of a private citizen. The District Court held however that "historical comment on the espionage-related activities of Wolston and others who became involved in the controversy during the 1950's requires just as much protection as did media coverage of the events as they occurred". 429 F. Supp. at 178. Again we agree with the District Court. The issue of Soviet espionage in 1958 and of Wolston's involvement in that operation continues to be a legitimate topic of debate today, for that matter concerns the security of the United States. The mere lapse of time is not decisive. *Meeropol* v. *Nizer*, 381 F. Supp. 29 (S.D.N.Y. 1974), *aff'd*, 560 F.2d 1061 (1977), *cert. denied*, 98 S.Ct. 727 (1978). In the *Meeropol* case the plaintiffs were the children of Julius and Ethel Rosenberg who were executed in 1953 following a trial for espionage. The District Court (Tyler, J.) held that in 1974 they remained public figures because as children of the Rosenbergs they had "spent much of their early years in the public spotlight." *Id.* at 34. The Circuit Court of Appeals agreed "that the Rosenberg sons are public figures. . . . In the course of extensive public debate revolving about the Rosenberg trial appellants were cast into the limelight and became 'public figures' under the *Gertz* standards." 560 F.2d at 1066.

THE ABSENCE OF ACTUAL MALICE

Under the rule of *New York Times Co.* v. *Sullivan*, *supra*, the plaintiff may not recover for a defamatory falsehood unless he can show that it was published with "actual malice", that is with knowledge that it was false

or with reckless disregard of whether it was false or not. This means that the defendants here were entitled to summary judgment unless Wolston, as a public figure, could show enough to go to a jury on the issue of actual malice. *Washington Post Co.* v. *Keogh*, 125 U.S. App. D.C. 32, 35, 365 F.2d 965, 968 (1966), *cert. denied*, 385 U.S. 1011 (1967); *cf. Goldwater* v. *Ginzburg*, 261 F. Supp. 784, 788 (S.D.N.Y. 1966). We therefore turn to the evidence before the District Court on this issue.

The defendant Barron devoted four years to the writing of *KGB*. He was assisted by the large Reader's Digest research staff with offices both in this country and abroad. It appears however that the statements about Wolston in *KGB* were based primarily upon the FBI report published in 1960, and to a lesser extent upon the book, "My Ten Years As a Counterspy", published in 1959.

The author of the book "My Ten Years As a Counterspy," Boris Morros, was a former Soviet espionage agent and confederate of Jack Soble who later became a double agent for the F.B.I. In the book, Morros identifies Wolston as a Soviet espionage agent in the United States. According to Morros, Soble told him that an individual who had operated in Germany under the code name "Slava" had supplied Soble with information valuable to the Soviets. Morros states that in the fall of 1954 Soble identified Ilya Wolston as "Slava". "Slava" or Wolston is mentioned on eighteen pages in the book, but Morros adds that he knew nothing about Wolston's activities except what Soble, "a confirmed liar," told him. The book also recites that Wolston failed to respond to six subpoenas issued by a federal grand jury, that Wolston pled guilty to a contempt of court charge, and that he received a one-year suspended sentence. Approximately 12,500 copies of the hardcover edition of the Morros book were printed, and 141,000 copies of the paperback edition.

In May 1960 the Federal Bureau of Investigation prepared a report entitled "Expose of Soviet Espionage". By direction of the Attorney General the report was transmitted to the Subcommittee to Investigate the Administration of the Internal Security Act and other In-

ternal Security Laws of the Committee on the Judiciary of the United States Senate and in July it was published by the Subcommittee. 13,000 copies of the Report were ordered to be printed. A section of the report entitled "Jack Soble Case" contains the following.

> In the early 1940's the FBI was conducting an intensive investigation into the activities of Vassili Zubilin (true name, Vassili Mikhailovich Zarubin), Third Secretary of the Soviet Embassy, Washington, D.C. Zubilin had entered the United States on December 25, 1941, with his wife, Elizabeth, and son, Peter. The investigation disclosed that Zubilin had been an important Soviet intelligence agent for many years. During 1934-1937 he was in the United States on several occasions utilizing an American passport fraudulently obtained under the name of Edward Joseph Herbert.
>
> The first break in the FBI investigation came when in the Spring of 1943, Zubilin, while under physical surveillance by the FBI, was observed to contact Boris Michael Morros, a motion-picture producer in Hollywood. After extensive investigation into the activities of Morros, he was interviewed by the FBI in July, 1947, and admitted he was recruited by Zubilin for Soviet intelligence activities. Morros, thereafter, agreed to operate as a double agent against the Soviets under the direction of the FBI. Thus began an operation of intrigue which led to the expose of a Soviet espionage ring in New York City culminated by the arrest on January 25, 1957, by FBI Agents of Jack Soble, Myra Soble and Jacob Albam on charges of conspiring to commit espionage. In addition, *the FBI investigation resulted in identifying as Soviet intelligence agents*, Jane and George Zlatovski, who were indicted on July 8, 1957, charged with espionage conspiracy; Alfred and Martha Stern, who were indicted on September 9, 1957 on two counts charging espionage conspiracy; *Ilya Wolston*, who was charged with contempt for failing to appear before a grand jury and on August 7, 1958, pleaded guilty in the Southern

District of New York; Mark Zborowski, who was indicted for perjury on April 18, 1958, as a result of his denial before the Federal Grand Jury that he knew Jack Soble; and Vassili Molev, an official attached to the Soviet Embassy, Washington, D.C., who was declared persona non grata, January 25, 1957. [Emphasis supplied]

Jack and Myra Soble

* * * *

Soble supervised activities of Soviet agents both in the United States and Europe; assigned them to recruit U.S. Government employees stationed abroad, to obtain information concerning military equipment and supplies; and has claimed to have obtained information concerning the number of atomic bombs stockpiled in the United States and the rate of atomic bomb production as well as photographs of atomic "bunkers" in which bombs were stored.

(App. 324).

In a section entitled "Ilya Wolston" the report states:

On several occasions beginning May 7, 1950, Jack Soble furnished Boris Morros with information concerning an individual he described as a U. S. Army Colonel in Germany who furnished him information under the code name "Slava," which was very valuable to the Soviets. It is noted that from October, 1949, until July, 1951, Wolston was employed by the U. S. High Commissioner of Germany in Berlin. In January, 1955, Soble identified his nephew, Ilya Wolston as "Slava." In addition, Jack Soble, pleading guilty in April, 1957, furnished information identifying Wolston as a Soviet agent who provided him information for the Soviets on several occasions beginning when Wolston was in a military camp, about 1943. Soble said Wolston gave him information concerning his assignments and names of four persons at the camp whom he believed could be approached by the Soviets.

Information concerning the probable identification of Wolston as a Soviet agent was furnished to the Department of State in 1951, together with data developed concerning his black market activities in Germany. The Department of State, on the basis of these data, dismissed Wolston from his employment in Berlin. [Emphasis supplied]

(App. 325, 326).

Barron testified on deposition that he "had read the Boris Morros book, which identifies Mr. Wolston as a Soviet agent in numerous pages. But for purposes of documentation, it was the Senate Report on which we relied." (App. 64) In an affidavit he swore "I was confident upon publication of *KGB* that the book as a whole and each and every statement in it were true, and I was aware of no fact that tended to make me doubt the truth of the book or of any statement in it. . . . At no time have I been aware of any fact that would give me reason to doubt the truth of the F.B.I. Report or of any statement in it." (App. 294-95) To meet this evidence of good faith and get to a jury Wolston was required to produce evidence that notwithstanding his asserted reliance upon the book and report Barron "in fact entertained serious doubts as to the truth of his publication" and recklessly disregarded whether it was true or false. *St. Amant* v. *Thompson*, 390 U.S. 727, 731 (1968). As the Court put it in *Garrison* v. *Louisiana*, 379 U.S. 64, 74 (1964) it was necessary to show that the publication was made with a "high degree of awareness of . . . probable falsity."

To carry his burden Wolston contends that the facts justify the inference that Barron entertained serious doubts as to the truth of his statement that Wolston was a Soviet agent. First, Wolston says Barron knew that in his book Morros had characterized Soble as a "confirmed liar", and that Soble, an admitted spy, was therefore an unreliable source. Second, Wolston cites Barron's admitted failure to "check with the FBI or to make any other inquiry before labeling Wolston a Soviet agent, notwithstanding the fact that the capacity to make such inquiry was readily at hand." (Wolston Br. 31-32) We are not persuaded by these arguments.

It is apparent from the F.B.I. report that Soble's statements are not the only basis for the Bureau's conclusion

that Wolston was a Soviet agent. Thus the report states that "[i]nformation concerning the probable identification of Wolston as a Soviet agent was furnished to the Department of State in 1951, together with data developed concerning his black market activities in Germany." (App. 325-26) The report states however that it was not until January 1955 that Soble identified his nephew as Slava; and Morros in his book (P. 196) says this disclosure was first made to him by Soble in the fall of 1954. Moreover, the plain intendment of the F.B.I. report, taken as a whole, is that the Bureau's investigation identified Wolston as a Soviet agent, without reference to Soble. As for the Morros characterization of Soble as a "confirmed liar" it must be remembered that Morros was speaking of Soble, the Soviet agent. Barron in his deposition explained:

> I think we are speaking about, in a sense, two different people here—the Jack Soble as a Soviet agent and still under Soviet discipline, who was a professional agent, dissembling by nature and not necessarily immorally in his scheme of ethics as an agent, and then the Jack Soble who for reasons of his own decided to tell what he knew to the United States Government.

(App. 86).

The F.B.I. report makes it plain that when Soble "decided [to] tell what he knew" to the government the F.B.I. considered him a credible witness; and it was reasonable for Barron to accept this expert evaluation of Soble's credibility. We think the characterization of Soble by Morros is too weak a reed to support an inference that Barron's reliance upon the report was reckless.

We reject the argument that Barron was reckless because he failed to make inquiry to verify the statements in the F.B.I. report. Failure to investigate does not itself establish bad faith or recklessness. *New York Times Co.* v. *Sullivan*, 376 U.S. 254, 287-88 (1964); *St. Amant* v. *Thompson*, 390 U.S. 727, 733 (1968). In any event Barron was entitled to rely upon the report of the F.B.I., one of the great investigative agencies of the world, and

to believe that the Bureau's investigative skill and resources far exceeded any that were available to him. Moreover, so far as the Soble case was concerned, the report bore upon its face intrinsic proof of its reliability. The report stated that the Bureau's investigation of the case identified ten individuals as Soviet intelligence agents. Eight of these persons were indicted for espionage or perjury and pled guilty, were convicted, or became fugitives. The ninth, an attache to the Soviet delegation to the United Nations, was declared *persona non grata* and left the country. The tenth was Wolston. Thus, the results demonstrated the validity of the Bureau's investigative conclusions. Furthermore, the extensive research conducted by Barron and his staff, over a period of four years, revealed no evidence that Wolston had ever objected to the statements about him in the Bureau's report, or in the Morros book.

Finally Wolston contends that he was libeled by the footnote Barron appended to his list of "Soviet agents identified in the United States". As we have seen, the list includes Wolston. We repeat the footnote:

> No claim is made that this list is complete. It consists of Soviet agents who were convicted of espionage or falsifying information or perjury and/or contempt charges following espionage indictments or who fled to the Soviet bloc to avoid prosecution.

Wolston says this note falsely states that he was convicted of espionage and supports "the proposition that Barron was operating with reckless disregard for truth or falsity." Barron testified on deposition that to him the note meant that Wolston "fell in the category of someone who was convicted of contempt of court following espionage indictments [of others], which raised matters about which he refused to testify". (App. 70) We must agree with Wolston that the second sentence of the note is imprecise and ambiguous, and might be read as an awkward and involuted statement that he was indicted; but we think it does not follow as a reasonable inference that in writing it Barron was reckless or acted in bad faith. Imprecision and ambiguity of expression

are ills that sometimes afflict even careful and well-intentioned writers, including lawyers and judges. We think of E. B. White, commenting on a fuzzy passage in one of his essays: "the thing didn't come out as clear as I would have liked, but nothing I write ever does." E. B. WHITE, ESSAYS 87 (Harper & Row, New York, 1977).

CONCLUSION

We hold that Barron was entitled to summary judgment upon the ground that Wolston was a public figure and that the evidence raised on genuine issue with respect to the existence of actual malice on his part. This conclusion applies only to the defendants Reader's Digest, Bantam Books, Inc., Book-of-the-Month Club and MacMillan Book Clubs, Inc. The judgments of the District Court are

Affirmed.[3]

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[3] As an alternative ground for its decision the District Court in a footnote suggested that even if Wolston was not a public figure the "actual malice" standard of *New York Times Co.* v. *Sullivan* would still apply as a matter of District of Columbia law. The court cited *Hatter* v. *The Evening Star Newspaper Co.*, Civ. No. 8278-75 (March 15, 1976) in the Superior Court of the District of Columbia. In that case a judge of the Superior Court, granting summary judgment for the defendant in a libel case, stated, without elaboration or citation of authority:

> This Court concludes that the appropriate rule in this jurisdiction should be, and is, that a private individual involved in a matter of public concern may not recover in libel against a publisher, reporter or broadcaster who reports or comments on that matter, unless he proves by clear and convincing evidence that the defendants have violated the "actual malice" standard set forth in New York Times Company v. Sullivan, 376 U.S. 254 (1964).

The court's statement apeared in a brief unpublished order which recited several other grounds for granting summary judgment. Although we need not and do not decide whether this pronouncement is a definitive statement of District of Columbia law, we note that in a subsequent case, *Phillips* v. *Evening Star Newspaper Co.*, Civ. No. 9999-75 (June 30, 1977), 105 Daily Washington Law Reporter 1425, another judge of the Superior Court filed an elaborate opinion which concluded to the contrary that in the District a newspaper may be liable for actual damages suffered by a private person if it negligently publishes defamation, without actual malice.

SUPREME COURT OF THE UNITED STATES

No. 78-5414

ILYA WOLSTON, PETITIONER

v.

READER'S DIGEST ASSOCIATION, ET AL.

On Petition for Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

On consideration of the motion for leave to proceed herein *in forma pauperis* and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed *in forma pauperis* be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted. The case is set for oral argument in tandem with No. 78-680, *Hutchison* v. *Proxmire*.

January 8, 1979

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